Vol. I

(PART 2)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, APPELLANT,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL.

No. 486

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA AND PAUL WALKER, E. R. HUGHES, AND C. C. CHILDERS, ETC., ET AL., APPELLANTS,

vs.

CHAMPLIN REFINING COMPANY

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 26, 1931

(36,299, 36,300)

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[fol. 236] IN UNITED STATES DISTRICT COURT

[Title omitted]

SPECIAL FINDINGS OF FACT—Filed Sept. 11, 1931

This cause pursuant to assignment for final hearing came on to be heard, and the respective parties appeared by their respective counsel, introduced their evidence on June 29th and June 30th, 1931, and an adjournment was taken in order that counsel might brief the case and prepare for the argument thereof. Thereafter and on August 3, 1931, the cause was argued before the court and at the conclusion thereof the case was taken under advisement. The opinion of a majority of the court was filed herein on August 5, 1931, and a dissenting opinion on August 12, 1931.

Having considered the evidence fully the court finds the facts specifically as follows:

[fol. 237] I

Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New Mexico and is a citizen of said State; and has been regularly admitted and licensed to do business in the State of Oklahoma, pursuant to the laws thereof; and was, at the commencement of this suit, and is now doing business therein with its principal office and place of business in the City of Enid, Garfield County, Oklahoma. At the commencement of this suit, on September 15, 1930, and prior to the 10th day of January 1931, the defendants Fred Capshaw, E. R. Hughes and C. C. Childers were the duly elected, qualified and acting Corporation Commissioners of the State of Oklahoma. On the 10th day of January 1931, the term of office of the defendant Fred Capshaw expired and he was succeeded therein by the defendant Paul Walker, who qualified as such on said date; subsequently an order was entererd in this cause permitting it to be continued and maintained against the defendant Paul Walker, as successor in office to the defendant Fred Capshaw. At the present time, the defendants, Paul Walker, E. R. Hughes and C. C. Childers constitute the Corporation Commission of the State of Oklahoma. The defendant J. Berry King is the duly elected, qualified and acting Attorney General of the State

of Oklahoma. The defendant Lewis R. Morris is the duly elected, qualified and acting County Attorney in and for the County of Oklahoma, State of Oklahoma. The defendants are all citizens of the State of Oklahoma, with their residences and domiciles in the Western Judicial District thereof. The matter in controversy herein is in excess of $3,000.00, exclusive of interest and costs; and arises under the Constitution and laws of the United States.

[fol: 238] II

Plaintiff has been since its incorporation and is now engaged in the business of producing and refining crude oil and transporting and marketing petroleum and its refined by-products and natural gas in intrastate and interstate commerce. It owns and operates an oil refinery at Enid, Oklahoma, with a capacity of 15,000 barrels of crude oil per day, in which it has an investment of $3,840,038.31. At said plant the plaintiff refines and manufactures gasoline, kerosene, lubricating oils, waxes and other by-products of different grades. It owns approximately 735 tank cars of the value of $1,295,202.21, which it uses in the distribution of its refined products, among its customers in Oklahoma, Texas, Colorado, Kansas, Arkansas, Missouri, Minnesota, Iowa, Nebraska, South Dakota, North Dakota, Wisconsin, Michigan, Illinois, New Mexico and California. Plaintiff controls and operates approximately 470 miles of pipe lines, representing an investment of $3,146,228.48, for transportation of oil and gas in Oklahoma and other states. Plaintiff owns and operates a pipe line for the transportation of crude oil from the Oklahoma City oil fields to its Enid Refinery (extended to the Oklahoma City field in September 1930) having a carrying capacity of 18,000 barrels of crude oil per day and costing approximately $600,000. It owns and operates approximately 263 retail gasoline filling stations and 256 wholesale gasoline stations in the states of Oklahoma, Kansas, Texas, Iowa, Colorado and Illinois, which it supplies from its Enid, Oklahoma, refinery. The investment of plaintiff in filling stations and marketing equipment, situated in Oklahoma being $1,738,731.40, and that out of Oklahoma being $1,357,950.48. Plaintiff sells products of its refinery located at Enid, Oklahoma, in the

state of Oklahoma and other states and transports the same from its refinery in Enid, Oklahoma, to points in Oklahoma and other states.

During the period from July 1st, 1928 to May 31, 1931, 65% by volume, and 70% in value, of the products of its Enid Refinery were transported from its refinery in Oklahoma to other states and sold therein.

[fol. 239] In addition to oil produced from its own wells, plaintiff purchased 4,660,000 barrels of crude oil in 1930 and 4,821,000 barrels in 1929 from other producers for use at its Enid refinery. Its purchases so far during 1931 have been less than in previous years.

[fol. 240] III

The plaintiff is the owner and holder of oil and gas leases covering tracts and parcels of land, as follows:

Lots 30, 31, 32, 33, 34, 35, (containing .48 of an acre of land, more or less,) and Lots 50 and 51, (containing .16 of an acre more or less), Block 2 of Roosevelt Place Addition to the City of Oklahoma City, Oklahoma, as shown by the recorded plat thereof.

Lots 23, 24, 25 and 26, Block Nine (9) Armourdale Addition to Oklahoma City, Oklahoma, same being a subdivision of the Northwest Quarter in Section Two (2), Township Eleven (11) North, Range Three (3) W. I. M., Oklahoma County, Oklahoma, containing ½ acre, more or less.

All of Lots 3 to 20, inclusive, in Block Six (6), and all of Block Five (5) of Compton Park Addition to Oklahoma City, Oklahoma, according to the recorded plat thereof, containing 5 acres, more or less, being located in the SW4. Sec. 2-11N-3W, Oklahoma County, Oklahoma.

All of Block seven (7) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 4.07 acres, more or less, composed of fifty 25-foot lots.

All of Block Eight (8) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 4.07 acres, more or less, composed of fifty 25-foot lots.

All of Block Fifteen (15) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.91 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Nineteen (19) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.91

acres, more or less, composed of forty-eight 25-foot lots.

All of Block Twenty-two (22) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.88 acres, more or less, composed of forty-eight 25-foot lots.

All of Block Twenty-three (23) in Central Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 2.11 acres, more or less, composed of twenty-four 25-foot lots.

All of Block Eighteen (18), Schilling Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.16 acres, more or less, composed of Thirty-six 25-foot lots.

All of Block Eleven (11) in Eckroat Addition to Oklahoma City, and all of Block Two (2) in Layman's Addition to Oklahoma City, Oklahoma County, Oklahoma, containing 3.95 acres, more or less, consisting of 44 lots,

and in what is generally known as the "Oklahoma City oil [fol. 241] field"; that it is also and has been for a long time the owner of oil and gas mining leases on the

East Half of the Southeast Quarter of the Northeast Quarter of Section 14, Township 7 North, Range 6 East, and an undivided one-half interest in the South Half of the Southwest Quarter of Section 9, Township 6, Range 6, all lying in Seminole County, State of Oklahoma,

and in what is generally known as the "Greater Seminole area".

And is also the owner of an oil and gas lease covering

The Southeast Quarter of the Southeast Quarter and the South Half of the Northeast Quarter of the Southeast Quarter of Section 25, Township 23, North of Range 4 West, Garfield County, Oklahoma.

[fol. 242] IV

Plaintiff has drilled and completed nine producing oil wells on its leases in the Oklahoma City Field, at an approximate cost of $1,250,000.00 and is now drilling one additional well thereon which will cost approximately $140,000.00.

Plaintiff has drilled and equipped nine oil producing wells on its leases in the Greater Seminole Field, at an approximate cost of $569,000.00.

Plaintiff drilled one of its wells, known as McCalep No. 1, in the Oklahoma City field on Lots 30 to 35, Block 2, Roosevelt Place Addition. The said well penetrated a sand known as the "School Land Sand Zone" and produces oil from four lenses thereof. The average recovery of oil from said sand will be 25,000 to 30,000 barrels per acre. The estimated amount of recoverable oil at the place this well is located will be 33,000 barrels per acre. The potential production of said well on March 4, 1931, according to a four hour guage then taken was 5,276.40 barrels per day, computed according to the Corporation Commission's revised formula hereinafter stated. According to a guage taken on April 1st, 1931, such potential production was 3,882.90 barrels. Production of oil from this well was commenced in September 1930, and prior to February 9, 1931, the plaintiff produced therefrom 28,664.43 barrels of oil. Subsequent to Feb. 9, 1931, and prior to June 13, 1931, it produced therefrom 214,682.76 barrels of oil. From June 14th to June 25th, 1931, it produced 11,162.07 barrels.

Plaintiff drilled another of its wells, known as Naden No. 1, on Lots 23 to 26, Block 9 Armourdale Addition. The said well penetrated the upper part of the Wilcox sand and the school land sand zone. The estimated amount of recoverable oil at that place is 27,000 barrels per acre. The potential production from said well computed according to the revised rules and regulations of the Corporation Commission from a four hour guage taken on March 4, 1931, was 5,585.54 barrels per day, and from a four hour guage taken on April 2, 1931, was 3,305.18 barrels per day. Production of oil from this well was commenced in September [fol. 243] 1930, and during that month the plaintiff produced therefrom 13,935.94 barrels. No oil was afterward produced therefrom until March, 1931. From March 1, 1931, to June 13th, 1931, the plaintiff produced from said well, 196,577.54 barrels of oil, and from June 14th, 1931 to June 25, 1931 (incl.) 15,399.56 barrels.

The plaintiff drilled two wells known as Seal No. 1 and Seal No. 2 on the lots in Block 5 and Block 6, Compton Park Addition. The said wells penetrated the school land sand zone. The estimated amount of recoverable oil at the location of Seal No. 1 is approximately 13,000 barrels per acre, and at Seal No. 2, 7,500 barrels per acre. The potential production of Seal No. 1 calculated according to the re-

vised rules and regulations of the Corporation Commission from a four hour guage taken April 13, 1931, was 146.96 barrels per day and of Seal No. 2, was 272.72 barrels per day. Production was commenced from said wells in March 1931, and until June 13th, 1931, the plaintiff produced from said two wells 153,392.24 barrels and from June 14th to June 25th inclusive 3,951.04 barrels of oil.

Subsequent to Feb. 9, 1931 and prior to May 25, 1931, the plaintiff produced from the said four wells last above mentioned approximately 300,000 barrels of crude oil in excess of the amount it was entitled to produce under the rules, regulations and orders of the Corporation Commission hereinafter referred to, promulgated pursuant to the Oklahoma Oil Conservation Act approved February 11, 1915.

The evidence does not show the potential production of the other wells of plaintiff in the Oklahoma City field or the amount of oil produced therefrom. Those wells were completed a short time before the trial.

[fol. 244] V

The plaintiff has pipe line facilities for transporting 18,000 barrels of oil per day from its wells in the Oklahoma City field to its Enid refinery, and adequate pipe line facilities for transporting the oil from its wells in the Greater Seminole field to its said refinery. It has gas tight, steel storage tanks at its refinery, with a capacity of 55,000 to 80,000 barrels each and a total capacity of 645,000 barrels. It has a market for its refined products. It has stored no crude oil in earthen storage and permitted none of that produced from its wells to run at large on the surface of the earth, and has not wasted any oil produced from its wells, and all the oil it can produce will be utilized for commercial purposes. There was no evidence that closing in or pinching in its wells in the Oklahoma City field will cause water to enter the oil and gas sand, or damage its wells, or result in waste of oil or gas.

[fol. 245] VI

There are many oil pools in the State of Oklahoma. They include the Oklahoma City Pool and the pools in the Greater Seminole Area or field.

The oil and gas producing area designated as the "Greater Seminole Area", covers a territory from 15 to 20 miles long by 8 to 10 miles wide. Oil and gas is found in eight or more distinct and separated pools within said area, all producing from formations of a similar character. None of said producing pools overlie any of the others. The first of the pools in this area was discovered in 1925. On June 15, 1931, there were 2,441 producing oil wells within that area with a potential production of 564,908 barrels per day, determined from gauges made under rules and regulations of the Commission. The land in each pool is owned in separate parcels by different persons, each having the right on his own land to drill wells and take oil and gas from the reservoir beneath. The various wells are separately owned and operated by 80 different corporations, partnerships and individuals, oil and gas lessees of the respective land owners; and sixty-two, or about 77% thereof, known as non-integrated producers, have no pipe lines or refineries of their own and are entirely dependent upon others who purchase and transport oil, for an outlet for marketing their oil production. These non-integrated producers own 894, or about 37% of the producing wells, with a potential production of 225,507 barrels of oil per day, or about 40% of the total potential of the area. Five companies, owning 196 wells with a potential production of 76,806 barrels, have pipe lines or refinery connections affording a partial outlet for their production, but are in the same situation as the non-integrated producers in disposing of the remainder of their production. Nineteen different companies own, or control through affiliated companies, pipe lines extending into this area, with a daily carrying capacity of 468,200 barrels, most of whom from time to time purchase oil produced in said area from other producers therein in addition to that produced by themselves or affiliated concerns; production from the several pools [fol. 246] in that area has been regulated by orders, rules and regulations of the Corporation Commission entered and promulgated under the Oklahoma Oil Conservation Act for the purpose of preventing waste and protecting the co-equal rights of the several owners of the surface since August 1, 1927, by limiting the production of oil from each well to that proportion of its potential produc-

tion which the reasonable market demand for oil from the pool in which it is located bore to the total potential production of all the wells producing from such pool.

The oil and gas producing area known as the Oklahoma City field lies about 65 miles West of the Greater Seminole field. It covers an area extending approximately six miles North and South and three miles East and West. The North part of the area extends into the corporate limits of Oklahoma City. The portion of the area within such limits and adjacent thereto has been subdivided into lots and small parcels, some of which are only 25 feet wide by 140 feet long. All of plaintiff's leases in said field are in this townlot portion of the field. Oil was discovered in the Oklahoma City field in December, 1928, and the area has since been rapidly developed. Oil and gas is being produced in that area from four different zones, which lie more than 6,000 feet below the surface and are known as the Wilcox Sand, the School Land Sand, the Johnson or Kinter Sand, and the Arbuckle Lime. In parts of the area two or more of these producing formations overlie each other, and at many points the wells penetrate all of such overlying formations, and are capable of producing from all so penetrated. The superincumbent surface of each producing zone or zones is owned in separate parcels by many different persons, each having the right to drill into and produce oil and gas from the reservoir beneath. The wells in this field or pool are from 6,200 to 6,550 feet in depth. The cost of drilling and equipping a well in this pool varies from $130,000.00 to $150,000.00.

On June 15, 1931, there were 746 producing oil wells in the Oklahoma City field, having a total potential produc- [fol. 247] tion of 2,987,993 barrels, calculated according to the Corporation Commission formula. These wells are owned and operated by 53 different corporations, partnerships and individuals, (oil and gas lessees of the respective land owners), of which 36 are non-integrated, and 8 are partially integrated. These 44 non-integrated and partially integrated producers own and operate 650 of the wells, or 88% of all, and have a potential production determined according to the revised formula of the Commission, of 2,742,079 barrels per day or about 90% of the total potential production. Ten different producing companies own, or control through affiliated companies, pipe lines extending

into this area, with a carrying capacity of 316,000 barrels of crude oil per day. Most of these companies from time to time purchase oil from the producers thereof and transport the same from this field in addition to that produced by themselves or affiliated companies. Production of oil from the Oklahoma City field has been regulated by orders, rules and regulations of the Corporation Commission made under said Act for the purpose of preventing waste and protecting the co-equal rights of the several owners of the surface and their respective lessees continuously since October 15, 1929, by limiting the production from each well to that proportion of its potential production which the reasonable market demand for oil from said field, as found from the evidence before it to exist from time to time, bore to the potential production therefrom at the time.

[fol. 248] VII

The production of oil and gas in excess of marketing facilities and in excess of market demands results in above ground storage. At and prior to February 11, 1915, the date of the approval of the statute in question, as disclosed by the orders of the Commission entered in 1914 and 1915, the production of oil and gas in excess of transportation or marketing facilities or in excess of market demands resulted in large amounts of such storage in earthen tanks on the surface of the land with resultant waste, through seepage and by reason of heavy rainfalls carrying it away and by fires caused by lightning; and, when not wholly lost, in loss by evaporation of the most valuable constituent elements thereof, that is, much of the natural gasoline content thereof. It is a well known fact in the oil industry that oil can be best conserved by holding it in storage in the natural underground reservoir.

It is established by the evidence that to permit oil wells in flush or semi-flush pools to flow wide open for a considerable length of time results in the use of an excessive amount of gas pressure, and uneconomical and wasteful use of gas energy in recovering and lifting the oil and a tremendous loss in ultimate recovery. The proper and economical utilization of this energy is of particular importance in a pool such as the Oklahoma City pool where the wells are of tremendous depths and the cost of artifi-

cially recovering and raising the oil will be unusually great.

Before the passage of the statute here in question many oil pools of considerable consequence had been discovered in Oklahoma, notably among them being the Glen Pool about 1906, the Healdton Pool about 1910, and the Cushing Pool about 1912. Then, as now, there were a few operators, who, in addition to owning producing leases in these pools, had their own transportation, storage and refining facilities, and some of them were buyers of oil produced by others; but the great majority of the producers had neither storage, transportation, nor refining or marketing facilities of their own. The former are now referred to as "integrated producers" and the latter as "non-integrated producers." It was then the practice of the integrated pro- [fol. 249] ducers to make excesssive drafts upon the common source of supply through their own wells upon their own leases, and, by reason of the migratory and fugacious nature of the oil and gas deposits in the reservoirs, this practice worked great injury to the rights of the non-integrated producers because it drained the oil from beneath their lands; and many of them for their protection produced through their wells large quantities of oil and, having no market therefor, attempted to save it by constructing and running it into earthen tanks, sometimes made by erecting dams across ravines and even creek beds. Some of them erected steel or wooden tanks and stored their production therein. The conditions are described in orders of the Oklahoma Corporation Commission issued in 1914 and 1915. In Order No. 829 dated July 1, 1914, it is said that in the Cushing field surplus oil is being stored in earthen and steel tankage "and many thousand barrels have been dammed up in creeks." In Order No. 846 dated September 22, 1941, it is said that in times past when a crude oil pool was discovered in Oklahoma, some of the pipe line companies owning a very small tract in or near the center of the pool extracted an undue proportion of the oil from their properties and refused to buy oil from other producers within the pool; that "with the helplessness of the oil producers in materially curtailing the production and holding his oil in the ground until such times as the transportation facilities and marketing conditions will care for it, he is forced to store it at a cost of approximately thirty

cents per barrel, including loss the first six months by evaporation. There are now ten million barrels of surplus production of oil stored in the Cushing field." The non-integrated producers "cannot even protect their own property by holding the oil until such times as market and transportation conditions will properly care for the same. * * * Many barrels go down the creek and are destroyed in various ways." In its order No. 920 dated June 5, 1915, about four months after said law was enacted, it is recited that the Commission had ascertained that in the Healdton field more than 600,000 barrels of oil had been placed in earthen storage and that as the result of rains much of it [fol. 250] was carried off and greatly injured crops and farm lands. The Commission in its Order No. 937 of September 1, 1915, quotes a statement to the effect that more waste oil ran down the creeks from the Glenn Pool than was ever produced in Illinois. In a letter of instructions dated June 10, 1915, written to its agent to enforce its proration Order No. 920, the first to be issued under the Act here in question, the Commission mentions the evil conditions which had obtained before the passage of the Act and said:

"These conditions existed not only upon the date of the order but at the time of the trial (conducted as a basis for said order) and likewise upon the date of the enactment of the conservation law, and out of the conditions found by the Commission which were already known to the public, the said Act and the necessity therefor arose."

In said Order No. 920 the Commission interpreted the Act as intended to authorize the Commission to limit production to the amount of the reasonable daily market demand and to require ratable taking by all producers in the pool, and by said order this was done in the Healdton field.

In its current orders the Commission found that unless production in the prorated areas was limited to the reasonable market demand, conditions of waste and disproportionate taking, similar to those described in these old orders, would again arise; and the Court finds from the evidence in this case that the regulations prescribed by the Commission in its current orders, are necessary to prevent such waste and disproportionate taking.

[fol. 251] VIII

In Order No. 5189, dated June 30, 1930, the Commission found from the evidence introduced before it, that there was a general overproduction and importation of crude oil and refined petroleum in the United States and that said fact tended to reduce the amount of crude oil that could be produced in the State of Oklahoma without waste; that the potential production of crude oil in the United States at said time was approximately 4,730,000 barrels per day and imports aggregated approximately 300,000 barrels per day, thus creating a total possible current supply of 5,030,000 barrels per day, and that the approximate daily demand for domestic use and export in the United States was at that time approximately 2,840,000 barrels per day. The findings contained in its subsequent orders disclose that the same general condition of overproduction throughout the United States continued to obtain, and the Court finds that said conditions exist at this time.

In said order of June 30, 1930, in addition to the foregoing, the Commission found from the evidence before it that there were stocks of crude petroleum on hand in storage in the United States aggregating more than 698,000,000 barrels, which stocks were excessive and beyond the needs of the petroleum industry and also found from the evidence before it that by reason of the excessive supply of crude oil thus indicated, the purchasers of crude oil in Oklahoma were unwilling to purchase crude oil in Oklahoma for storage purposes in any amount that would be adequate to take care of the surplus of potential production in Oklahoma over the current demand; and the court also so finds from the evidence before it, there was not sufficient empty tankage available to take care of said excess and that unless the potential production in Oklahoma should be curtailed much oil would necessarily go to earthen storage where it would evaporate and thus be wasted. Similar findings of fact were contained in subsequent orders of the Commission.

[fol. 252] IX

The first of the present series of orders, rules and regulations of the Corporation Commission, commonly called

"proration orders", was put in effect August 1, 1927 and applied to the then existing flush and semi-flush pools in the Greater Seminole area. Almost continuously since said time proration orders issued from time to time by the Commission, applicable to the flush and semi-flush pools of the state, have been in force and effect. After the Oklahoma City field was discovered in December, 1928, it rapidly developed into a very prolific field, and the production therefrom soon exceeded the amount of the market demand for oil produced therein. The first of said proration orders which affected the Oklahoma City field was put into effect October 15, 1929. The Commission's orders usually covered a period of the next succeeding three calendar months and were made for such short terms because of the rapidly changing potential production of the prorated pools and changes from time to time in the amount of market demand from each of the said several pools.

[fol. 253] X

The said orders of the Corporation Commission which are attacked in this suit, were made and entered under and pursuant to the provisions of Sections 1, 3, 4, 5 and 6 of the Oklahoma Oil Conservation Act, approved February 11, 1915.

Each of the said orders was entered upon proper application by petition of some interested person; the application was set for hearing, of which due and reasonable notice was given to all persons and classes interested therein, as provided by section 6 of the Act; testimony was taken at the hearings on said applications, and the findings of fact upon which the regulations were based, were made from the evidence adduced at the hearings.

The evidence taken by the Commission upon the various hearings was not introduced in evidence in this suit, except an abstract of that part of the evidence taken at one of the hearings on the question of waste. The abstract of the evidence before the Commission so introduced sustained its findings of fact thereon. The allegations of the third amended and Supplemental Bill of Complaint that the several orders complained of were entered and promulgated by the Commission without having heard the testimony of any witnesses under oath; without having heard any sort

of legal evidence upon which to base said orders; and the findings of fact were not supported by any evidence before it, are not sustained by the evidence herein.

[fol. 254] XI

On June 30, 1930, the Commission made and entered its order No. 5189 in cause No. 10146 (Exhibit "A" to Third Amended and Supplemental Petition), being the first of the orders complained of in this suit. The order recites the findings of the Commission rendering it necessary to limit the production of oil from certain pools therein described, including those in the Greater Seminole Area, and the Oklahoma City field, for the months of July, August and September, 1930. The order recites the findings of the Commission as to the potential production from each of the pools affected and the reasonable market demand for oil from each during the period, and accordingly ordered that the production of oil from each well in the several pools during the period be limited to a certain therein prescribed percentage of its potential production, the percentage as to the wells in each pool being arrived at by dividing the market demand for oil from such pool by the total potential production of all wells therein as found by the Commission.

Thereafter by reason of an increase in potential production, and a decrease in market demand, the Corporation Commission found it was necessary to reduce the percentage prescribed by Order No. 5189, and by Order No. 5292, made and entered August 30, 1930, adjusted the percentage of production of the wells in the various pools for the month of September, 1930, to the changed conditions shown by the evidence before it.

Thereafter by Order No. 5337, made and entered September 30, 1930, the Commission continued its existing orders in force and effect until the 10th day of October, 1930.

By Order No. 5345, made and entered on October 10th, 1930, the Commission found that it was impossible to conclude a hearing then being had upon a petition for a proration order for the months of October, November and December, 1930, and extended its then existing orders in full force and effect until October 20, 1930, and thereafter until the further order of the Commission.

[fol. 255] XII

By order No. 5369, entered October 28, 1930, in said cause No. 10145 (now in force, except as modified by subsequent orders and referred to as the "basic order") the Commission grouped all the various oil pools in the State, placing in each group all the pools similarly affected by the order, and designated the respective groups by letters as Classes "A" to "H", inclusive. The Bowlegs, Earlsboro proper, Earlsboro Township, Little River, East Little River, Maud, Mission, Searight, Seminole, East Seminole and St. Louis pools in the Greater Seminole Area were grouped with certain other pools under the designation of Class "B" pools. The Carr City and South Earlsboro pools in that area were included in the Class "C" group. The Konawa pool in that area was included in the group designated as Class "D". The East Earlsboro and West Asher-Wanette pools in the Greater Seminole Area were designated as Class "E". The Oklahoma City pool was designated as Class "H".

The Commission determined from the evidence before it the potential production of the wells in each of the pools for each of the months of October, November and December, 1930, the reasonable market demand for oil from each pool for each of said months, and the number of barrels of oil necessary to be produced from each pool to supply the market demand therefrom for each of said months. In accordance with such findings and to prevent production in excess of the reasonable market demand from the several pools, during that period, the Commission ordered that the production (with certain immaterial exceptions) from each well in the respective pools, be limited to 50% in Class "B" and from 18¾ to 50% (according to capacity of the wells) in Classes "C", "D" and "E" of the potential production of the respective wells therein.

It was further ordered that production from the Oklahoma City pool (Class "H") be limited to 131,095 barrels per day for October, 134,589 barrels per day for November and 131,003 barrels per day for December, which amounts were found to be the reasonable market demand from that field for the said respective months. It was provided in the order that such permitted production in the Oklahoma [fol. 256] City pool should serve as a basis for fixing the

proportional production of the wells in said field until the Commission found from evidence that a greater or less reasonable market demand obtained. It was further ordered that the Umpire and Operator's Committee for the Oklahoma City pool compute the percentage of potential production from time to time as found necessary to conform the permitted production to the reasonable market demand and report their findings to the Commission as a basis for an ancillary order.

It was further provided in the order that should the demand for crude oil increase prior to December 31, 1930, to such an extent as to permit a greater outlet from the pools affected by the order, the facts should be reported to the Commission, and notice was given that the percentage of production allowed by the order would be revised accordingly. Jurisdiction of the cause was retained and notice given that supplemental and ancillary orders would be made from time to time as required by new developments.

Said order also provided that "producers in each of the pools in Oklahoma are invited to appear before the Commission at any time that they may deem themselves peculiarly injured by the administration of this order in any particular or in any manner discriminated against, and the Commission will hear and act upon the evidence disclosed in such hearing. Notice should be given to the umpire and the operators' committee of the intention to thus appear before the Commission on any such question."

[fol. 257] XIII

By its Order No. 5413, made and entered on December 30th, 1930, the Commission extended and modified its Order No. 5369 dated October 28, 1930, for the months of January, February and March 1931. The Order recites the findings of the Commission from the evidence adduced at the hearing, as to the potential production from each of the various pools, including the pools in the Greater Seminole Area, and the Oklahoma City field, and the reasonable market demand therefrom during the period. Upon these findings the Commission prescribed the percentage of its potential production each well in the several pools should produce to conform the production from each pool to the reasonable market demand therefrom, resulting in an al-

lowable production of 50% of the potential capacity of the wells in certain pools in the Greater Seminole Area, and percentages of from 18¾% to 50%, depending on the potential capacity of the wells, in certain other pools in that area. The Commission fixed the percentage of production of the wells in the Oklahoma City field, effective January 3, 1931, at 7:00 A. M., at 1½% of the potential production thereof, upon a finding, from the evidence, that the potential production of all the wells in that field was 5,388,298 barrels per day, and that the market demand for oil therefrom amounted to 85,000 barrels per day. The Commission further ordered that the method of proration in the Oklahoma City field should on that date be changed from the "time basis," theretofore in effect therein, to the basis of percentage of daily potential production under rules and regulations embodied in a separate supplemental order that day issued. In that order, 5414 it was provided that each well in the Oklahoma City field should be *guaged* by an open flow to capacity for four hours, while other wells in the vicinity were shut in, and that the amount of oil produced during the four hours multiplied by six would be the potential capacity of the well per day of twenty-four hours.

[fol. 258] XIV

By its order No. 5437, made and entered to February 10th, 1931, the Commission found that a market demand existed for oil from the Oklahoma City field in excess of that found by Order No. 5413, for the remainder of the period covered by said Order No. 5413, and ordered that the production from that field be increased from 85,000 to 125,000 barrels per day. In said order No. 5437 the Commission found that the then total Oklahoma City pool potential of approximately 6,000,000 barrels per day arrived at by multiplying the amount produced during the four hour open flow of the wells therein by six, resulted in an amount in excess of what would be actually produced in a period of twenty-four hours of continuous flow with all the wells in the pool open at the same time, but that it was a physical impossibility because of inability to find storage to make a test of all wells open simultaneously for twenty-four hours. The Commission found from the evidence that a well opened by itself when all other wells were closed,

would produce two and one half times as much as it would with all other wells open at the same time. Therefore, to arrive at the amount that would be produced during the four hour period if all other wells were open, the Commission ordered that the amount produced during the period with the other wells closed should be divided by two and one-half. The Commission further found from the evidence that a well open continuously for twenty-four hours would not produce six times as much as in the first four hours, but only five times as much. Therefore, to arrive at a correct daily potential of a well the amount produced during the four hour gauge should be divided by two and one-half and the quotient multiplied by five, or the same result would be arrived at by dividing by three and multiplying by six. This is the method of determining the potential production elsewhere referred to in these findings as the Commission's formula or revised formula. The Commission found that according to that formula the then potential production of the Oklahoma City field was 2,000,000 barrels, and that in order to limit the production to 125,000 barrels, each well should be limited to 6¼% of its potential production determined according to said formula. Order No. 5369 of October 28, 1930, was continued in force until March 31, 1931, except as so modified by this and other subsequent orders.

[fol. 259] XV

On March 5, 1931, by Journal Entry No. 1856, the Commission set aside an oral announcement it had made on March 4, 1931, increasing the allowable production in the Oklahoma City field to 150,000 barrels per day and continued its previous order of February 10, 1931, fixing the allowable for said field at 125,000 barrels per day in full force and effect until the further order of the Commission.

[fol. 260] XVI

On March 17, 1931, by Journal Entry No. 1864, the Commission continued in force and effect until its further order its previous Orders No. 5413 and 5414, and No. 5437, and the order contained in its Journal Entry No. 1856.

[fol. 261] XVII

On April 20, 1931, by Order No. 5468, the Commission increased the allowable production from the Oklahoma City field to 165,000 barrels per day for the remainder of the month of April and to 175,000 barrels per day for the month of May and fixed the percentage of allowable production from the wells in said field at 7% of their respective potential productions for the period from 7:00 o'clock A.M., April 20, 1931 to 7:00 o'clock A. M., May 1, 1931, and at 6% during the month of May, 1931, with certain unessential modifications with respect to overproduced, and underproduced, and underrun wells.

[fol. 262] XVIII

On May 29, 1931, by Order No. 5486, the Commission fixed the allowable production for the wells in the Oklahoma City field at 6% of their respective potential production for the month of June, 1931, and until the further order of the Commission, and continued in force and effect its previous orders relating to said field except as modified in and by said Order No. 5486 and set the matter down for further hearing at 10:00 o'clock A.M., June 29, 1931.

XIX

[fol. 263] On June 27, 1931, by special Order No. 5548, the Commission, in order to provide for an increase in market demand, increased the allowable production from the Oklahoma City pool to 200,000 barrels per day for the last four days of the month of June and fixed the percentage of allowable production from the wells therein at 10% of their respective potential capacities during said four day period and until the further order of the Commission.

XX

[fol. 264] On June 30, 1931, by Order No. 5549, the Commission, pursuant to a hearing commenced on June 29, 1931, fixed the allowable production from the Oklahoma City field for the month of July at 203,170 barrels per day; ascertained the potential production of the field as a whole as being 2,678,679 barrels per day and fixed the allowable

production from each of the wells therein at 8% of their respective potential productions; and fixed the allowable production for the month of August at 198,000 barrels per day and fixed the percentage of allowable production from each of the wells therein during said month at 7% of the potential production of such wells; and fixed the allowable production for the month of September, 1931, at 182,000 barrels per day and the percentage of allowable production at 6% of the potential production of the wells, until and subject to the further orders of the Commission.

XXI

[fol. 265] In its said Order No. 5369, dated October 28, 1930 and which is now in force except as modified by subsequent orders, the Commission stated that it had examined many witnesses and had afforded an opportunity for everyone interested to be heard. Therein the Commission made the following finding of fact from the evidence before it:

"The Commission finds from the evidence that crude oil and natural gas occur together, or in close proximity to each other in the ground and that there is a common gas pressure throughout a common pool which exerts an energy or force to move the gas and oil toward the point of least resistance, and that therefore when wells are drilled into a pool or structure the oil and gas become migratory, and, having the power of self-transmission, will move from one property to another, underground, in such pool; and that when some of the wells in such a common pool are permitted to produce at a greater proportion of their capacity than others, drainage occurs from the less active to the more active wells, if such disproportionate condition is continued; that in the Oklahoma City pool there is a heavy gas pressure which would cause such drainage should disproportionate taking of crude oil and gas be permitted; that the history of the oil producing business in this and other surrounding states shows that in the case of flush pools where proportional taking from the wells is not enforced, and where the full production from the pool cannot be taken, either because of inadequate transportation facilities or because the reasonable market demand does not equal the potential production, producers who do not have

physical or market outlets will be forced to produce their wells to capacity in order to prevent drainage of the oil to the wells of such producers as do have adequate physical or market outlets. In such cases, in the absence of adequate steel storage available to every producer, some of them will flow the oil into earthen pits. This has occurred many times in the oil pools in Oklahoma and surrounding states and has always caused actual physical waste to the crude oil through evaporation, leakage and washouts to a very large extent. The Commission finds that this would be the case in the Oklahoma City field, and in many other fields of the state if production were not curtailed as provided in this order.

The Commission further finds that to permit the wells in the Oklahoma City field to flow wide open and continuously, without limitation as to time, would cause serious underground waste."

The Court, from the evidence before it in this case, also so finds.

In said order the Commission made the following additional finding of fact from the evidence before it, namely:

(i) "The Corporation Commission further finds that in addition to the prevention of waste of crude oil, the establishment of the curtailment plan in this order set forth will tend to conserve natural gas and gas pressure in the pools to which it shall be applied."

This is established also by the evidence in this case.

XXII

[fol. 266] In said Order No. 5369, dated October 28, 1930, the Commission made the following finding of fact from the evidence before it:

"The Commission finds that the full potential production from the Oklahoma City pool cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand, and that the reasonable market demand from said pool at the present time is approximately 131,095 barrels per day, and that in the month of Novem-

ber said reasonable market demand from said pool will be approximately 134,589 barrels per day and that in the month of December the reasonable market demand from said pool will be 131,003 barrels per day, and that the market demand herein named is somewhat contingent upon transference by the purchasing companies of purchasing power from the "Class A" pools herein to the Oklahoma City pool and upon ability to transfer pipeline connections, and the Commission therefore finds that the orders, rules and regulations should be made sufficiently flexible so that increases or decreases in market demand from said Oklahoma City pool and increases or decreases in potential productions therefrom, can be recognized by ancillary orders of the Commission, and that for this purpose the umpire and Operators' Committee should be instructed to compute from time to time, the rate of curtailment necessary in order to conform the permitted production to the reasonable market demand from the said Oklahoma City pool and to report the same to the Commission with the facts in support thereof as a basis for such ancillary order; it being understood, however, that whatever reasonable market demand develops for crude oil from the Oklahoma City pool shall be prorated among all the producing wells therein, so that each well will be permitted to produce its proportionate share of the amount of oil that may be produced from said field without waste."

The Court finds from the evidence before it, that the full potential production from the Oklahoma City field on the date of said order and during the period of time covered thereby and since then and at this time could not and cannot be produced without waste, including physical waste and waste incident to the production of crude oil or petroleum in excess of the reasonable market demand for oil therein and that in said order and subsequent orders the Commission restricted the production of oil in said field to the amount of the reasonable market demand for oil therein as then ascertained to exist and that the present restriction of the production of oil therein conforms to the amount of the reasonable market demand for oil produced therefrom.

XXIII

[fol. 267] That in each of the above mentioned orders the Commission retained jurisdiction of the cause and authority to make and enter supplementary and ancillary orders from time to time as would be required by new developments and changes in conditions. The Commission made and entered supplementary and ancillary orders, not herein specifically mentioned, for the purpose of adjusting the production to changes in potential production and market demand, and correcting inequalities which inevitably from time to time developed as an incident to the execution of its orders, and in order to accomplish as nearly as could be done, the prevention of unfair and inequitable taking on the part of any producer in any of the prorated pools.

XXIV

[fol. 268] On the foregoing features of the case as a whole the Court finds generally from the evidence introduced before it:

(a) That there was at the times the orders in question were made and entered, and is at this time, a serious potential overproduction of crude oil in Oklahoma and throughout the United States and particularly in the flush and semi-flush pools of Oklahoma, including the pools in the Greater Seminole Area and the Oklahoma City field, to which proration was applied by the Corporation Commission;

(b) That the threatened overproduction was so great at the respective times when said orders were entered by the Commission, as to constitute an emergency;

(c) That with stocks of petroleum on hand above ground then as now already greatly excessive, there were and are no adequate storage facilities to take care of the excess of potential production over market demand and that if no curtailment were applied crude oil would inevitably then and that it would inevitably now go into open earthen storage and be physically wasted;

(d) That the full potential production would then and now exceed all transportation and marketing facilities and certainly would exceed all market demands; and

(e) That accordingly it was necessary in order to prevent the waste of the petroleum, an irreplaceable and natural resource which had been discovered in the state of Oklahoma, and in order to conserve the same, that the production of said flush and semi-flush pools should be restricted as has been done in and by the orders, rules and regulations of the Commission herein attacked by the plaintiff, and that in order to enforce such curtailment with equity and justice to the several producers in each pool it was necessary to enforce proportional taking from each well and lease therein.

Accordingly, a comprehensive plan of curtailment and proration, conforming to the general and specific rules prescribed in said Oil Conservation Act, was constructed by the Commission on the testimony of operators and others and was set forth in detail in the said several orders.

XXV

[fol. 269] At all times in all pools where production was limited by orders of the Corporation Commission, except in Oklahoma City field, the daily average production permitted to each well in a pool was determined by that proportion of its potential production, which the market demand for oil from the pool bore to the total potential production of the pool, as ascertained by the Commission, which is known as the "percentage of potential" basis of proration.

By its Orders No. 5189, 5369 and 5413 the Commission prescribed rules and regulations for taking gauges of the wells and determining the daily potential production thereof in such pools.

The rules and regulations for the gauging of wells where percentage proration was applied provided that a gauge of all producing wells should be taken by the umpire or under his supervision and that it should be taken by each operator in the pool in respect of his or its own wells between the hours of 7:00 A. M. on the day set by the umpire and 7:00 A. M. on the following day; that prior to the taking of such gauge the umpire should appoint a representative of an operator owning a lease adjoining the particular property to be guaged and should notify the opera-

tor whose property was to be guaged of the name of such representative, said notification to be given prior to the taking of the guage. The regulation expressly made it the positive duty of such representative to remain on the lease that was being guaged throughout the entire day that the guage was being taken to witness the guaging of the production therefrom and it required such witness and the operator whose property was guaged, immediately upon the completion of the guage, to file a written statement with the umpire showing the production of such lease and of each well thereon, during the day the guage was taken. The regulation provided that the production so shown should constitute the potential of each of the wells on said lease until the next guage was taken. It was further provided that the wells in each pool should be guaged from time to time as the umpire might designate but not less than once each month, except that in the Greater Seminole Area, [fol. 270] other than in certain designated pools therein the guage might, upon the direction of the umpire, be determined by applying a proper decline curve for each lease so guaged.

In Order No. 5413, issued December 30, 1930, it was provided, that instead of taking the monthly guage, that on the basis of open guages previously taken in certain named pools, the potential production should be declined 5% per month and in certain other designated areas 3% per month and in one named area 10% per month. The testimony establishes that the guages were taken in all the prorated areas other than the Oklahoma City field in accordance with these rules and regulations.

The testimony further shows that in those pools where the decline curve had been applied to previous guages for the purpose of determining the potential production for the month instead of taking a new guage, an actual open flow test was made in the Spring of 1931, which established that the percentage of decline applied produced substantially correct results.

Prior to January 3rd, 1931, the wells in the Oklahoma City Area were prorated on the "time basis" because, as stated by the Commission in Order No. 5369, "the operators in the Oklahoma City pool have, up to this time, unanimously recommended—that proration in that pool be ap-

plied according to the time method," and, as stated in Order No. 5413, "the operators requested it and because there was no practicable way of taking accurate guages as a basis for proration by the percentage of potential method, there being no facilities for handling the oil that would be produced while the guage was being taken." Prior to that date the potential production of the field was determined from the amount of oil produced from the several wells during the last period of permitted open flow during a certain number of hours, reduced by calculation to a twenty-four hour basis.

Under the time method of proration in effect in the Oklahoma City field prior to January 3rd, 1931, all wells were permitted to be opened and operated for the production of [fol. 271] oil the same number of hours in each month, which resulted in each well producing that proportion of its potential production, which the entire amount produced from the field each day during the month (the market demand for each day) bore to the entire potential production of the field.

On December 30th, 1930, by Orders No. 5413 and 5414, the Commission, after a full hearing and consideration of the question changed the method of operating the Oklahoma City pool from the time basis to the percentage basis, its order to be effective from and after 7:00 A. M., January 3, 1931. In Order No. 5414 detailed regulations for the guaging of the wells therein in order to operate the same under the percentage basis, were set forth. Therein it is provided that before any well in the pool is open for guaging, the owner thereof shall file with the umpire at his office in Oklahoma City, on or before 12:00 Noon of the day preceding the day on which such well is to be opened for such purpose, a written notice giving the name and address of the operator in charge of said well, the name of the operator's representative who will witness the test of such well, the location of the well, its number, and the hour, not earlier than 8:00 A. M, nor later than 1:00 P. M. at which the well will be opened for such purpose; that said notice shall remain on file in the office of the umpire and be subject to the inspection of any producer in the pool. It further provides that when a well is opened for the purpose of determining its potential, it shall be permitted to produce for four hours and that the amount produced during said time shall be

multiplied by six and that the amount thus arrived at shall constitute the tentative daily potential of said well for the then current potential period of thirty days. It further provided that the umpire should appoint a representative of an operator in no way interested in the well to be tested, to be present and to witness the test being made of each well and that it should be the duty of such representative to remain at the well during the entire time the same is being [fol. 272] produced for the purpose of determining its potential and to witness all measurements and calculations made for the purpose of determining the actual production of oil by said well; and that immediately after the completion of the test the representative of the operator and the representative appointed by the umpire should sign a written statement duly verified by both on a form to be approved by the Commission and file the original with the Commission and a copy with the umpire, showing the amount of oil produced by said well during the test period as defined in the regulation. The wells in the Oklahoma City field have since been guaged in accordance with said regulations. Said regulations further provide:

"In the event the umpire's representative, and well owner's representative at the testing of the well, are agreed as to the daily potential of the well as determined by the test, the operator may continue forthwith to produce said well until there has been produced therefrom, including the amount produced during the test, the total allowable, to be calculated as hereinafter provided, for the current month. In the event the representatives of the umpire and the well owner are not agreed as to the daily potential of any well, the well shall be shut in at the close of the test, and the matter referred to the umpire. If the umpire and the operator agree as to the daily potential of the well, the operator shall, thereupon, be permitted to produce the well until it has produced, including the amount produced during the test, its tentative allowable for the current month based upon the potential so agreed upon. If well owner and umpire are unable to agree as to the daily potential of any well, the matter shall be referred to the Corporation Commission for determination, and pending final determination by the Commission the operator shall be permitted to produce the well until, on the basis above outlined, it has

produced a tentative allowable for the current month calculated on the basis of the daily potential as fixed by the umpire."

The Court finds from the evidence that a guage for a longer period, or a guage of all of the wells in the Oklahoma City field at the same time with all wells open to full production would be physically impossible; that the available storage and transportation facilities would be wholly inadequate to handle the oil produced; that the method employed in the Oklahoma City field and in the Greater Seminole Area for the taking of guages, arrived at approximately accurate results; that the orders of the Commission fixed the allowable of every producing well in the Oklahoma City field at the same relative proportions of their [fol. 273] respective potentials, and that said orders did likewise in every other prorated field; that there has been a substantial compliance with the guaging provisions of Section 5 of the Oil Conservation Act; and that no discrimination between producing wells resulted from the method by which the potentials thereof were determined; that the rules and regulations of the Commission relating to the giving of notice and the taking of the potentials in the several prorated areas were observed in the taking of said potentials and there is no evidence showing or tending to show that any frauds were practiced or favoritism shown in connection therewith. No notice was given to the operators in any pool of any intention to guage wells in any other pool.

In its Order of February 10, 1931, No. 5437, the Commission changed the method of computing the potential production of the wells in the Oklahoma City field from that of multiphying the four hour guage by six to that of multiplying the four hour guage by six and dividing the result by three, for the reasons set out in this court's finding No. XIV. It appears from the testimony herein, that it was physically impossible to flow all the wells in the field wide open at the same time for as long as four hours, much less twenty-four hours, since it would result in a production which it was impossible to store or otherwise conserve and the greater portion of the production would have been wasted on the ground. As a result it was necessary that all neighboring wells be closed in when taking the four hour

guage of any given well. Since all wells were guaged in the same manner, their respective potentials, as shown by such guages, resulted in no discrimination as between the producers. The Court finds from the evidence in this case that this method of arriving at the potential is justified by the circumstances and is reasonable and that since it was applied alike to all wells, it has not resulted in discrimination as between producers, or between pools.

XXVI

[fol. 274] Pursuant to the provisions of Section 5 of the Oil Conservation Act, authorizing it to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce the Act, the Commission from time to time prior to June 30, 1930 (the date of the first of the Orders complained of in this suit) appointed Ray M. Collins as umpire and agent of the Commission, and an "Operators Committee" for each prorated pool consisting of three or more operators in such pool, to assist him in administering the rules and regulations prescribed by the orders.

On June 30, 1930, the said Collins was again appointed as such agent and umpire, and an Operators Committee appointed for each prorated pool. On November 3rd, 1930 the said Collins was again appointed agent and umpire, and Otto Bradford was appointed as his special assistant, and an Operators Committee for each prorated pool was appointed by the Commission. Again on January 5th, 1931 the said Collins was appointed such agent and umpire by the Commission, and the said Bradford reappointed as his assistant, and an Operators Committee was appointed for each prorated pool. The said appointees are now acting as agents of the Commission in the administration of its rules and regulations now in force and effect. Each and all of said appointments were consented to by the Governor expressed in writing.

The said Collins and Bradford devote all their time to the employment by the Commission. Prior to the appointment of Bradford as his assistant, Collins served all the prorated pools in the State. Since his appointment, Bradford has devoted his time to the Oklahoma City field, and Collins to the remaining prorated areas. The umpires, as

agents of the Commission, have supervised the taking of gauges of wells, have ascertained the daily production of all prorated wells, checked the same against pipe line runs, and amounts transported by other carriers, and kept complete records thereof, to the end that the wells in each pool should be operated and oil produced in accordance with the prescribed rules and regulations, and violation thereof detected and reported.

[fol. 275] The appointment of such agents was necessary for the purpose of properly and effectively administering the Act and the rules and regulations thereunder. The Commission did not have a sufficient number of regular employees to care for the extra work entailed by the administration of the rules and regulations. No appropriation was made by law for payment of the services of agents appointed under Section 5 of the Act. The members of the operators Committee served without compensation. The salary ($2,000.00 per month) and expenses of Collins, has been paid since he was first appointed, from a fund derived from voluntary contributions of producers in the Greater Seminole Area. All producers in the Seminole area only are permitted to and the great majority of them do, contribute thereto. The contributions are made pro rata on the basis of the production of each contributor to the total production.

The compensation of Umpire Bradford ($600.00 per month) and expenses of his office are paid by voluntary contributions of a great majority of the producers in the Oklahoma City field, who also contribute thereto on the same pro rata basis. All operators in the Oklahoma City field desiring so to do are permitted to contribute to said fund.

The method of compensating the umpire and his assistants has been followed at all times under the present series of proration orders, commencing in the Fall of 1927, and has been at all times known to the Commission and Governor, and was a matter of general knowledge. During that time there has been two sessions of the Legislature of Oklahoma, one beginning in January 1929, and the other in January 1931. The practice was not prohibited by the Legislature and no funds otherwise provided for the payment of such agents. The umpires and operators Com-

mittees are not officers of the State of Oklahoma, but merely agents or employees of the Commission, appointed with the consent of the Governor. While this method of compensating agents of the Commission is calculated to breed suspicion and distrust and destroy confidence in the integrity of the Commission, the evidence does not establish that [fol. 276] such agents and employees, of the Commission, have been guilty of favoritism or dishonesty, or that the Commission has acted arbitrarily or discriminated in favor of the groups paying such agents, or that the plaintiff has suffered any injury by reason thereof, and the Court finds no basis in the evidence for striking down the orders by reason of this practice.

[fol. 277]

XXVII

The Court finds that the Commission in and by its proration orders has not discriminated against the Oklahoma City pool nor any other prorated area, nor has it discriminated in favor of the Greater Seminole Area. The basis upon which the Commission classified the different prorated pools for the application of the varying percentage of allowable production therein as shown in its several orders was the existing relation between the potential production of each pool and the amount of crude oil which could be produced therefrom without waste. (See, for example, paragraph "(g)" of Order No. 5369.) Said relation was not the same in all the prorated pools and therefore the percentages of curtailment necessarily varied as between pools. We find, as did the Commission in its orders, that the said pools were not all served in common by the same pipe lines and purchasers, and that the reasonable market demand for certain of them was greater in proportion to the potential production thereof than in the case of others; that some of them were older than others and have been prorated longer than others; that in some of said pools there are located purchasers whose local facilities are not extended to the others; and also that in some of said pools there has been more intensive drilling and wells of larger capacity have been brought in than in others. In 1925 or 1926 the first of the pools in the Greater Seminole Area was discovered and other pools in said area have been since discovered and developed; whereas the

Oklahoma City pool was not discovered until December, 1928, at which time many of the pools in the Greater Seminole Area were quite fully developed and were producing very large quantities of oil and some of them at said time had passed the period of flush production. The Seminole Area has already produced approximately 500,000,000 barrels of oil, whereas the Oklahoma City field has already produced about 60,000,000 barrels, although its actual daily production is at this time greater than the actual daily production of all of the pools in the Greater Seminole Area. The Seminole Area is in a more favored location with reference to the long established large inter-state trunk pipe lines than is the Oklahoma City field and naturally has a [fol. 278] larger market demand. The Court finds that the Commission and also Umpire Collins and the so-called state-wide advisory committee (appointed by producers) have endeavored to induce the purchasers of crude oil to increase the amount of their purchases from the Oklahoma City field. The constant bringing in from time to time of new wells of very large potential capacity in the Oklahoma City field, which is not yet fully developed, has resulted in a constant and rapid increase in the potential of the field as a whole, whereas the market demand for oil therein has increased very slowly. The Court finds that these circumstances justify and have necessitated a larger percentage of allowable production in the Seminole Area than that in the Oklahoma City field. Said field, by the drilling of additional wells therein, has proved to be a field of extensive area with wells of tremendous productive capacity. At the time of the trial of this cause there were over 800 wells therein and the field was still in the course of development.

We do not find that there has been any discrimination in the orders of the Commission in favor of the Greater Seminole Area, or against the Oklahoma City pool, or in favor of any prorated pool in the state as against any other pool therein. None of the prorated pools have the same market demand in proportion to their potential production. In order to equalize the production with the demand from each of them it was necessary to have different degrees of curtailment. The Commission having recognized the reasonable market outlet for each of the pools we find that there has not been any unfair discrimination as between pools.

[fol. 279] XXVIII

The Court finds that none of the orders of the Commission have been made and entered for the purpose of fixing or maintaining the price of crude oil, or that the orders have had that effect. The price of crude oil in 1927 when the first proration order of the present series of orders was entered was more than $2.00 per barrel. Since that time the price of crude oil has gradually declined from time to time until at the time of the trial of this cause it was 35¢ per barrel. Some of the protestants who appeared before the Commission at the hearing conducted by the Commission as a basis for Order No. 4369 dated October 28, 1930, made the contention, according to the findings set forth in said order, that the proration of the Oklahoma oil pools was a scheme to maintain the price of crude oil by the Commission; but in and by said order the Commission declared that its orders have been and are based solely upon the purpose to prevent waste of crude oil in the State and in the process of doing so to require ratable or proportional taking from each of the wells in a common source of supply where curtailment of production from the pool as a whole was necessary in order to prevent waste, and the Commission declared it had exercised its independent judgment in prescribing the proration orders and had not attempted to influence the price of crude oil or refined products and that if any such effect had occurred it was incidental and not intended. In said order the Commission found that since 1926 the price of oil had declined 40%, and declared that it had never limited production below the market demand, and declared that the prices at which oil was sold was fixed not by the Commission but by the free play of competition and the relation between supply and demand in the world market. There was no evidence introduced at the trial of this cause showing or tending to show that the orders of the Commission were intended to fix or control the price of crude oil. It is established by the evidence that in each instance the Commission has allowed to be produced the full amount of the market demand for each pool and there is no evidence in this case that there was a demand for more oil from any pool than the Commission allowed to be produced.

[fol. 280] In 1914 the Oklahoma Corporation Commission entered a few orders attempted to fix the price of crude oil. At that time there was no statute in Oklahoma analogous to the provisions of the Act of February 11, 1915. The Commission has never entered any order under Section 2 of said Act.

[fol. 281] XXIX

There was introduced in evidence an agreed narrative statement of the evidence before the Commission on the subject of waste. We find from said narrative statement that it was proved to the Commission and well established that the commission of both surface waste, under-ground waste and waste incident to the production of crude oil in excess of reasonable market demands, would have occurred in each of the prorated pools in the absence of the making of the proration orders and rules and regulations herein attacked by the plaintiff, for the prevention of such wastes. We find that the evidence before the Commission on the subject of waste clearly established that the commission of such wastes was imminent.

[fol. 282] XXX

The orders, rules and regulations of the Corporation Commission regulating the production of oil from the wells of all producers, including those of plaintiff, in the Oklahoma City field, Greater Seminole field and other fields in Oklahoma, were made and entered upon petitions filed by interested persons, and after proper notice, and upon sufficient evidence, for the purpose of preventing waste and protecting the co-equal rights of the several owners of land over each pool. In one of the orders the Commission recites that 65% to 75% of the crude oil produced in Oklahoma is sold to purchasers and refiners who transport it out of the State. The orders, rules and regulations do not operate to prevent or restrict the sale or transportation in interstate commerce of any oil produced. There is no evidence that the Commission intended by their orders and rules to limit the amount of oil entering interstate commerce for the purpose of controlling the price of crude oil

or its refined products, or of eliminating the plaintiff or any other producer or refiner from competition with any other producer or refiner. There is no evidence of any agreement, combination or confederation among competitors of plaintiff, by the formation of an "Operators Committee" or otherwise, for the purpose of monopolizing or restricting trade and commerce in crude oil or its refined products among the several states. There is no evidence that an Operators Committee of plaintiff's competitors, through Ray M. Collins or any other person, formulated the orders, rules and regulations promulgated by the Commission or that the same were approved by the Commission without sufficient, appropriate or competent evidence, legally or properly to justify entry thereof.

[fol. 283]

XXXI

This Court denied the application of plaintiff for an interlocutory injunction on February 9th, 1931, and thereafter the plaintiff prior to May 28th, 1931, produced from its wells in the Oklahoma City field approximately three hundred thousand barrels of oil in excess of the amount which by the orders of the Commission it was allowed to produce, and on May 28th, 1931 the Attorney General of Oklahoma, acting under the authority of the provisions of Section 9 of said Act, filed a suit in the name of the State of Oklahoma on the relation of the Attorney General against plaintiff herein as defendant in the District Court of Oklahoma County, Oklahoma, seeking an injunction against plaintiff to restrain it from violating said Act and/or the orders of the Commission in the operation of its wells in the Oklahoma City pool and for the appointment of a receiver to take charge of and to operate said wells in conformity with said Act and orders. Upon application of the Attorney General a temporary injunction was issued by said state Court restraining the plaintiff herein from producing oil or otherwise violating said Act and orders of the Commission. Thereupon, upon application of the plaintiff herein to this Court in this cause, this Court on June 13th, 1931 issued a restraining order against the Attorney General of the State of Oklahoma enjoining the prosecution of said suit and commanding the Attorney

General to procure dissolution of said State Court injunction. Thereupon the defendant J. Berry King, Attorney General of the State of Oklahoma, dismissed said suit in the State Court. No contempt proceeding have been instituted before the Corporation Commission against the plaintiff for violation of its orders. No prosecution has been commenced against the plaintiff or any of its officers, agents or employees under Section 8 of the Act.

[fol. 284] The plaintiff excepts to each and every of the foregoing findings, and such exceptions are accordingly allowed.

Dated September 11, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge.

I concur in the findings of fact numbered 1 to 20, inclusive; that is, that they are substantially correct.

I specifically dissent to all findings or parts of findings that the orders of the Commission were necessary in order to prevent waste of oil and gas and necessary to enforce proportionate taking from each well and lease within the oil fields of Oklahoma. I am of the opinion that the evidence shows that the orders of the Commission were entered for the purpose of curtailing the production of crude oil in order to raise the price of such oil, and that no attempt has been made by the Commission to prevent the waste of natural gas but the operation of oil wells under the orders of the Commission has resulted in a flagrant and enormous waste of gas.

I specifically dissent to finding number 25 and I am of the opinion that the evidence establishes that the orders of the Commission have never required a gauge of the oil wells in prorated fields to be made in compliance with the statute.

I specifically dissent to findings number 26 and 27 and I am of the opinion that the evidence establishes gross discrimination between the Oklahoma City oil field and the Greater Seminole oil field.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 285] IN UNITED STATES DISTRICT COURT.

[Title omitted]

CONCLUSIONS OF LAW—Filed Sept. 11, 1931

The Court states separately its conclusions of law as follows:

(1) Under the police power the state may impose reasonable regulations to prevent waste in the production, handling and marketing of the natural oil and gas resources thereof; and make reasonable regulations for the protection of the coequal rights of landowners over a common pool of oil and gas to take from the common source of supply and to prevent one from taking an undue proportion to the detriment of the others and to prevent one from committing waste to the injury of the others.

(2) It is within the power of the Legislature to lay down a general rule for the prevention of waste and for the protection of such coequal rights of the several owners of land over a common pool of oil and to delegate to an administrative agency the power to promulgate rules and regulations covering matters of detail for carrying the general rule into effect.

[fol. 286] (3) That the provisions of Sections 1, 3, 4, 5, 6 and 7 of the Act of the Legislature of Oklahoma approved February 11, 1915, entitled, "An Act defining and Prohibiting the Waste of Crude Oil or Petroleum, providing for the Equitable Taking of the same from the ground and conferring Authority on the Corporation Commission, prescribing the Penalty for the Violation of this Act, and declaring an Emergency", being Chapter 25 of the Session Laws of Oklahoma, 1915, pages 28 to 31, and Sections 7954, 7956, 7957, 7958, 7959 and 7960 of Compiled Oklahoma Statutes, 1921, constitute a valid exercise of the police power of the State of Oklahoma, and are not in contravention of the provisions of the Commerce Clause or of the Fourteenth Amendment to the Constitution of the United States.

(4) Sections 3, 4, 5 and 6 of said Act provide a complete scheme for the enforcement through rules and regulations promulgated by the Corporation Commission of Okla-

homa of the general rules provided in Sections 1, 3, 4 and 5 thereof for the prevention of waste and for the protection of the coequal rights of the several owners of land over a single pool of oil and gas to take from the common source of supply.

(5) The Court is not concerned with the question of whether said sections of said Act provide the best method of preventing waste and protecting such rights. The determination of that question was a legislative prerogative.

(6) The methods of preventing waste and protecting such rights which are provided in said sections of said Act are, when supplemented by proper rules and regulations of said Commission, reasonably calculated to prevent such waste and to protect such coequal rights of the several owners of land over a common pool; are clearly within the competency of the Legislature, and are not an unreasonable interference with the rights of such owners to enjoy their property.

[fol. 287] (7) That the orders, rules and regulations of the Corporation Commission which are complained of in this suit were made pursuant to and under the authority conferred by the provisions of Sections 3, 4, 5 and 6 of the said Act.

(8) That the said orders of the Commission were not made or entered pursuant to or in the exercise of any authority granted or pretended to be granted to the Commission by the provisions of Section 2 of said Act, and the validity of the said Section 2 is not involved herein.

(9) That said orders, rules and regulations of the Corporation Commission having been made pursuant to the said provisions of said Act and after proceedings conducted by and before said Commission in accordance with the provisions of Section 6 of said Act upon proceedings instituted before said Commission and notice given and hearings conducted as provided therein, constitute a valid exercise of the authority conferred upon the Commission, and their enforcement does not deprive the plaintiff of its property without due process of law or deny to it the equal protection of the law regardless of the fact that plaintiff could produce its wells affected by said orders and utilize with-

out physical above-ground waste an amount of oil in excess of that permitted by the said orders.

(10) That the limitation by the Commission in its said orders of the production of oil from each of the common sources of supply affected by said orders to the amount of the reasonable market demand for oil therein was and is within the authority granted to said Commission by Sections 3 and 4 of said Act in order to prevent economic waste, underground waste, surface waste, and waste incident to production of crude oil in excess of transportation or marketing facilities or reasonable market demands, and in order to protect the coequal rights of the several owners of lands or their lessees and owners of wells thereupon, in such common sources of supply to reduce the oil beneath [fol. 288] to possession; that said limitation is a reasonable basis upon which to predicate the regulation of the taking of crude oil from common sources of supply wherein the full production therefrom can be obtained only under conditions constituting waste as defined in said Act.

(11) That neither the provisions of Sections 1, 3, 4, 5 and 6 of said Act nor the said orders, rules and regulations of the Commission issued by authority thereof were or are intended to decrease the normal supply of crude oil and thereby raise or maintain prices; but the main purpose of said provisions of said Act and of said orders, rules and regulations was and is to prevent the waste of crude oil or petroleum and to protect the coequal rights of all the several owners of land and/or of their lessees over the respective pools to take from the subsurface common source of supply of crude oil, and any effect which they may have upon the price of crude oil is indirect and incidental, and they are not invalidated by reason thereof.

(12) That the rules and regulations of the Commission for taking gauges of the wells are, under the conditions found to exist by the Commission and by this Court, reasonable, and they substantially comply with the provisions of Section 5 of said Act, and their enforcement does not result in discrimination between producing wells or between pools.

(13) That the limitation by the Commission of production from the various distinct pools or common sources of supply, at different percentages or ratios of potential pro-

duction, was justified by the facts and circumstances found to exist by the Commission and by this Court, and does not result in any unreasonable or unlawful discrimination against the Oklahoma City pool or as between any of such sources of supply.

(14) That the payment of the salaries and expenses of the Umpires as agents of the Commission by the voluntary [fol. 289] contributions of interested parties, in the absence of an appropriation of state funds therefor, and impliedly sanctioned by the Legislature, does not render the orders invalid. In the absence of any showing of favoritism or dishonesty, or that the Commission has acted arbitrarily or discriminated in favor of those paying such agents, or of any injury to the complainant, such payment does not render the enforcement of said orders invalid.

(15) The limitation imposed upon the production of oil under said Act and the rules and regulations of the Commission, does not impose a direct or unlawful burden on interstate commerce.

(16) Section 8 of said Act, providing punishment by fine and imprisonment for violations of the Act, and Section 9 thereof, providing for the appointment of a receiver, with limited powers, for the producing wells of any person violating the provisions of the Act, in terms impose penalties for violations of the Act and not for violations of the orders, rules and regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect. Sections 1, 3, 4, 5 and 6 of said Act are too indefinite and uncertain as penal provisions to warrant the imposition of said penalties for violations thereof as distinguished from violations of the orders, rules and regulations of the Commission. Therefore, we conclude, as a matter of law, that Sections 8 and 9 are invalid. However, Sections 1, 3, 4, 5, 6 and 7 are separable from Sections 8 and 9, and although Sections 8 and 9 are invalid, this does not render invalid the said other sections nor the orders which are complained of; and said orders, rules and regulations may be enforced by any appropriate remedy, such as mandamus or injunction.

(17) The Commission not having invoked the provision of Section 6 of said Act to punish plaintiff for contempt

[fol. 290] for violation of its orders, rules and regulations, the question of whether power to punish for contempt, as granted in the provisions of said section, is an invalid delegation of judicial power to the legislative branch of the state government, does not properly arise in this suit, and it is unnecessary to decide said question.

(18) The plaintiff is not entitled to any of the injunctive relief which it seeks in this suit against the enforcement of the provisions of Sections 1, 3, 4, 5 and 6 of said Act and/or the orders, rules and regulations of the Commission which are complained of herein; but is entitled to a permanent injunction against the defendants J. Berry King, as Attorney General of the State of Oklahoma, and Lewis R. Morris, as County Attorney of Oklahoma County, Oklahoma, and their respective successors in office, enjoining them from instituting or prosecuting any proceedings against the plaintiff under and by virtue of Sections 8 and 9 of said Act.

The plaintiff excepts to each of the foregoing Conclusions of Law, except that part of Conclusion No. 16 which holds that Sections 8 and 9 of said Act are invalid and that part of Conclusion No. 18 which holds that the plaintiff is entitled to a permanent injunction against the enforcement of said Sections 8 and 9.

The defendants and each of them except to that portion of Conclusion No. 16 which holds invalid the provisions of Sections 8 and 9 of said Act and that portion of Conclusion No. 18 which holds that the plaintiff is entitled to a permanent injunction against the enforcement of said [fol. 291] Sections 8 and 9.

September 11, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge.

I dissent, except to that portion of Conclusion of Law No. 16 which holds invalid Sections 8 and 9 of said Act, and that portion of Conclusion of Law No. 18 which holds that the plaintiff is entitled to a permanent injunction against the enforcement of said Sections 8 and 9.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 292] IN UNITED STATES DISTRICT COURT

[Title omitted]

The attached revised and corrected majority opinion on final hearing is herewith filed in above entitled cause.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge.

I dissent from the foregoing.

F. E. Kennamer, District Judge.

[fol. 293] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 1156. Equity

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

MEMORANDUM OPINION—Filed Sept. 1, 1931

Before Cotteral and Phillips, Circuit Judges, and Kennamer, District Judge

By COTTERAL and PHILLIPS, Circuit Judges:

This is a suit brought by Champlin Refining Company, a corporation, to enjoin the enforcement of certain oil proration orders made by the Corporation Commission of the State of Oklahoma. The case has been finally heard and submitted on the merits; the facts appear from the special findings of fact filed herewith and need not be re-iterated here.

The orders in question are predicated on the provisions of the Act of February 11, 1915, S. L. 1915, page 35, sections [fol. 294] 7954-7963, inclusive, C. O. S. 1921, which is set out in note 1.

NOTE 1

"Section 1. Waste prohibited. That the production of crude oil or petroleum in the State of Oklahoma, in such manner and under such conditions as to constitute waste, is hereby prohibited.

"Section 2. Production and sale regulated—corporation commission. That the taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested (vested?) with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State.

"Section 3. Waste defined—protection. That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil.

"Section 4. Production regulated—discrimination of purchaser prohibited. That whenever the full production from any common source of supply of crude oil or petroleum in this State can only be obtained under conditions constituting waste as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is author-

ized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

"Section 5. Wells gauged—governor to consent. That for the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said [fol. 295] Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act.

"Section 6. Enforcement of act—hearings before corporation Commission. That any person, firm or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in addition thereto, shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law.

"Section 7. Appeals to supreme court—effect on orders. That appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corpora-

tion, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court.

"Section 8. Penalty for violation. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm, or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment.

"Section 9. State may secure receiver—extent and manner. That in addition to any penalty imposed under the preceding section, any person, firm or corporation, violating the provisions of this act, shall be subject to have his or its producing property placed in the hands of a receiver by a court of competent jurisdiction, at the suit of the State through the Attorney General, or any county attorney, but such receivership shall only extend to the operating of producing wells and the marketing of the production thereof, under the provisions of this act.

"Section 10. Validity of relative sections of act. That the invalidity of any section, sub-division, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof."

[fol. 296] Counsel for plaintiff contend: First, that the statute on which the orders are predicated is unconstitutional; and, second, if the statute is valid that the orders themselves violate the constitutional rights of plaintiff and are void.

The Validity of the Statute

We observe at the outset, that the burden rests upon the plaintiff to establish that the statute infringes the con-

stitutional guaranties which it invokes and if the statute is susceptible of a construction which conforms to constitutional requirements, doubts must be resolved in favor of and not against the state. Toombs v. Citizens Bank of Waynesboro, 281 U. S. 643, 647; United States Airways v. Shaw, 43 Fed. (2d) 148, 150.

The statute has a dual aspect: First, as a penal statute to prevent waste and to protect the co-equal rights of the several owners of land situate over a common pool of oil and gas to take from the common source of supply; and, second, a regulatory statute to be supplemented by rules, regulations and orders of the Commission to accomplish the same ends.

The penalties provided are for violations of the statute and no penalties are provided for violations of the rules and regulations promulgated by the Commission.

[fol. 297] We are of the opinion that the statute is too indefinite and uncertain to be sustained as a penal statute. Smith v. Cahoon, Sheriff, 283 U. S. —. An oil operator should not be required at the peril of severe criminal penalties to determine in the operation of his oil and gas wells whether he is committing economic waste or producing in excess of reasonable market demands because such terms are not defined in the Act and are of uncertain and doubtful meaning. Likewise, a producer from a common source of supply should not be required to determine at the peril of such penalties whether he can operate at full production without committing economic waste or producing in excess of reasonable market demands.

Furthermore, it is unreasonable to require an operator to choose between two approved methods of operation, the results of which cannot be forecast with precise accuracy, in dealing with the ordinary problems confronted in the drilling and operation of oil and gas wells, at the peril, if he makes the wrong choice, that some underground waste will result and he thereby become subjected to such severe penalties, under a statute which affords no guide for the operator under such circumstances. However, except in one particular hereinafter mentioned, the validity of the Act as a penal statute is not before us.

[fol. 298] Oil and gas are natural resources which cannot be replaced and the power of the state to impose reason-

able regulations to prevent waste in the production, handling and marketing thereof is undoubted. Ohio Oil Company v. Indiana, 177 U. S. 190; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61; Walls v. Midland Carbon Co., 254 U. S. 300; Cooley's Constitutional Limitations, 8 Ed. vol. 2, pp. 1319-1321.

The right of the state to make reasonable regulations for the protection of the co-equal rights of land owners over a common pool of oil or gas to take from the common source of supply and to prevent one from taking in an undue proportion to the detriment of the others, and to prevent one from committing waste to the injury of the rights of the others is well settled. Ohio Oil Company v. Indiana, supra; Lindsley v. Natural Carbonic Gas Company, supra; Walls v. Midland Carbon Company, supra; Oxford Oil Co. v. Atlantic Oil and Producing Co., 22 Fed. (2d) 597; Id., 16 Fed. (2d) 639; Marrs v. City of Oxford, 24 Fed. (2d) 541; Id., 32 Fed. (2d) 134, 138.

In the Ohio Oil Case the court said:

"On the other hand, as to gas and oil, the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property. But there is a co-equal right in them all to take from a common source of supply, the two substances which in the nature of things [fol. 299] are united, though separate. It follows from the essence of their right and from the situation of the things, as to which it can be exerted, that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right, to the detriment of the others, or by waste by one or more, to the annihilation of the rights of the remainder. Hence it is that the legislative power, from the peculiar nature of the right and the objects upon which it is to be exerted, can be manifested for the purpose of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste."

It is within the power of the legislature to lay down general rules for the prevention of waste and for the pro-

tection of such co-equal rights of the several owners of land over a common pool and to delegate to an administrative agency the power to promulgate rules and regulations covering matters of detail for carrying such general rules into effect. Plymouth Coal Company v. Pennsylvania, 232 U. S. 531; Oxford Company v. Atlantic Company, supra; 12 C. J. p. 847, sec. 830.

Section 10 of the Act provides "that the invalidity of any section, subdivision, clause or sentence of this Act shall not in any manner affect the validity of the remaining portion thereof."

Sections 1, 3, 4, 5, 6 and 7 of the Act provide a complete scheme for the enforcement through rules and regulations promulgated by the Corporation Commission of the general rules provided in sections 3 and 4 for the prevention of waste and for the protection of the co-equal rights of the [fol. 300] several owners of land over a single pool of oil and gas to take from the common source of supply, and may, in our opinion, be severed from the remaining portion of the Act. Ohio River W. R. Co., v. Dittey, et al., 232 U. S. 576; Grand Trunk R. Co., v. Michigan R. Commission 231 U. S. 457; Phoenix R. Co., v. Geary, 239 U. S. 277; Grenada Lbr. Co., v. Mississippi, 217 U. S. 433; Western Union Telegraph Company v. City of Richmond, 224 U. S. 160.

We are not concerned with the question of whether such sections provide the best method of preventing waste and protecting such rights. The determination of that question is a legislative prerogative. Chicago, B. & Q. R. Co., v. McGuire, 219 U. S. 549, 569; Block v. Hirsh, 256 U. S. 135. The question here is whether such provisions are reasonably calculated to prevent such waste and protect such rights and are not an unreasonable interference with the rights of such owners to enjoy their property.

The production of oil and gas in excess of transportation or marketing facilities or in excess of market demands results in aboveground storage. At the time this statute was enacted, as shown by the orders of the Commission, it resulted in large amounts of such storage in earthen reservoirs, with resultant waste through seepage and evap- [fol. 301] oration. It is a well known fact in the oil industry that oil can be best stored under ground. Furthermore, it is established by the evidence that to permit oil

wells to flow at their maximum flush production results in the use of an excessive amount of gas pressure, an uneconomical and wasteful use of gas energy in lifting the oil, and a tremendous loss in ultimate recovery. This is of particular importance in a pool such as the Oklahoma City pool where the wells are of tremendous depth and the cost of artificially raising the oil will be unusually great. It is important that the wells shall be permitted to produce with the lowest practical gas-oil ratio, to the end that the gas pressure shall be preserved throughout a long period and the greatest ultimate recovery of gas and oil obtained.

Sections 3 and 4 of the Act, when supplemented by proper rules and regulations of the Commission are reasonably calculated to prevent such waste and to protect such co-equal rights of the several owners of land over a common pool. And, in our opinion, are clearly within the competency of the legislature.

It is asserted by counsel for plaintiff that the statute and the orders have for their purpose an interference with the law of supply and demand, by decreasing the normal supply of oil and gas and thereby raising the price, and [fol. 302] that they are price-fixing in character. It may be that the restriction on production imposed by the statute will prevent a supply in excess of the market demands and thus indirectly tend to sustain the price of oil and gas. But such is not the main purpose of the statute, and the fact that it may have an indirect effect on prices does not, in our opinion, render it invalid.

Counsel for the plaintiff further contend that the provisions of section 6, authorizing the Commission to punish as for contempt a violation of its orders is a delegation of judicial power to a legislative branch of the government, in violation of section 1, Article 4, of the Oklahoma Constitution. The Commission has not invoked that provision of the Act for the enforcement of the proration orders against the plaintiff and the validity of such portion of section 6 is not here presented. If it is in fact invalid, the orders of the Commission may be enforced by appropriate proceedings in mandamus or injunction. 51 C. J. 83, section 149.

Validity of the Orders

Counsel for plaintiff contend that the orders themselves are void: First, because they have for their object the fixing of prices by limiting the supply of oil; second, because they are predicated on information furnished by agents of the Commission, who receive a salary for their [fol. 303] work from certain of the producers in the fields affected by such orders; and, third, because no lawful gauges have been taken of the wells in such fields, as required by section 5 of the Act.

The theory upon which the orders are predicated is that oil from a given pool shall not be produced in excess of the market demands therefor in order to prevent wasteful storage and wasteful use of gas pressure in lifting the oil.

Counsel for plaintiff assert that, since it is able to take oil in excess of the amounts permitted by such orders and to transport and market the same without the commission of any waste, a denial of its right so to do amounts to a deprivation of its property in contravention of the Fourteenth Amendment. The plaintiff is a so-called integrated producer; that is, it owns both producing wells, pipe lines, refineries and marketing facilities. Other producers have no pipe line, refinery or marketing facilities, and if they should be permitted to produce in excess of market demands they would have to store the same and this would result in waste. On the contrary, if plaintiff should be permitted to take all the oil it could utilize without waste, it would encroach upon the rights of other producers not having pipe line, refinery and marketing facilities, to take [fol. 304] from the common source of supply. Under these circumstances, we are of the opinion that the limiting of the taking to the market demands is a reasonable regulation for the prevention of waste and the protection of the co-equal rights of the owners of land over such pool. "Where the public interest is involved preferment of that interest over the property interest of the individual, * * * is one of the distinguishing characteristics of every exercise of the police power which affects property." Miller v. Schoene, 276 U. S. 272, 280, and cases there cited.

As observed with respect to the Act itself, the object of the orders is to prevent waste and to protect the co-

equal rights of the owners of land over the common pool, and the fact that such orders tend to prevent the oversupply of oil and gas in excess of market demands and indirectly affect the prices thereof, does not make them price-fixing in character, and for that reason invalid.

The employment by the Commission of agents and employees who are paid by groups of producers in the fields affected by such orders to gather the data and information on which such orders are in part predicated is subject to condemnation. It is only calculated to breed suspicion and distrust and to destroy confidence in the integrity of the Commission. However, the evidence does not establish that such agents and employees have been guilty of favor- [fol. 305] itism or dishonesty, or that the Commission has acted arbitrarily or discriminated in favor of the groups paying such agents. Furthermore, while the system is objectionable, it has been in vogue over a long period of time, during which a session of the state legislature occurred. Such legislature did not see fit to provide any funds with which to pay such agents and thereby gave implied legislative sanction to the practice.

While we think the practice of employing agents paid by producers interested in such orders should be discontinued, we find no basis in the evidence because thereof for striking down the orders.

The fact that the Seminole field is permitted a greater percentage of its potential production than is the Oklahoma City field is not necessarily a discrimination in favor of the former. The Seminole field is an older one, is more favorably located with reference to the large interstate pipe lines, and naturaly has a larger market demand. It has passed the period of flush production. These circumstances justify a larger percentage of allowable production for the Seminole field.

Section 5 provides that for the purpose of determining proportionate production under section 4, a gauge of each well shall be taken under rules and regulations prescribed by the Commission. The Act leaves the method and details [fol. 306] for taking such gauges to the Commission. If the gauges result in permitting each owner to take the same proportion of his actual potential production, it is immaterial what method of gauging is used or whether potential

production is determined by measurement of actual production. A gauge of the wells in the Oklahoma City field at the same time with all wells open to full production would be physically impossible. The available storage and transportation facilities would be wholly inadequate to handle the oil produced. The method employed in the Oklahoma City and Seminole fields arrived at approximately accurate results. The orders fixed the allowable of every producing well in the Oklahoma City field at substantially the same relative proportion of their respective potentials. They did likewise in the other fields. We think there was a substantial compliance with section 5 of the Act, and that no discrimination between producing wells resulted from the method by which the potentials thereof were determined.

The Validity of the State Court Proceedings

The facts with reference to such proceedings are set forth in paragraph 34 of the Third Amended and Supplemental Bill of Complaint and need not be repeated here. They are predicated on the provisions of section 9 of the Act. This provision is penal in character and is for the [fol. 307] purpose of punishing violations of the provisions of the Act itself, (not the orders of the Commission), as a criminal statute. For the reasons hereinbefore indicated, we think this section is void and that such proceedings in the state courts should be enjoined.

Interstate Commerce

We are clearly of the opinion that the scheme of proration is not invalid as a regulation of or burden on interstate commerce. It is true that a substantial portion of the oil produced in this state goes into the channel of such commerce. But in order to conflict with the regulatory power of Congress, there must be a direct burden thereon. In this case, the interference is entirely too remote in character. The principle is too well settled to require citation, that the congressional power of regulation attaches only when interstate transportation has begun. Proration enforced under state powers cannot be said to affect commerce in oil to which producers have acquired no title. While they have a right to take the oil, yet title does not

vest in it until it is reduced to possession. Ohio Oil Co. v. Indiana, supra; Rich v. Donaghey, 71 Okl. 204; Alexander v. King, 46 Fed. (2d) 235. The production of oil is analogous to the manufacture of goods or the mining of coal. Neither is interstate commerce, although the product may be later shipped to other states. Hammer v. Dagenhart, [fol. 308] 247 U. S. 251; Delaware L. R. Co., v. Yurkonis, 238 U. S. 439 See also: West v. Kansas Nat. Gas Co., 221 U. S. 229; Penna. v. West Virginia, 262 U. S. 553; Foster-Fountain Packing Co., v. Haydel, 278 U. S. 1.

These are the views of a majority of the Court. We have not taken the time necessary to prepare a more formal opinion, because we deemed it important to make an early disposition of the cause.

KENNAMER, District Judge, dissenting:

I concur in the opinion of the majority of the court, holding the penalty provisions of the Conservation Act unconstitutional, and that the Corporation Commission has power under the regulatory provisions of the Act to enter orders enjoining oil operators committing actual waste in the production of oil and gas. I dissent from that part of the opinion sustaining the orders of the Commission permitting the administration of the Conservation Act through privately paid agents of interested parties in the production and marketing of oil and gas. I am further of the opinion that the orders of the Commission are discriminatory and enforced in an unconstitutional manner. I shall file a formal dissenting opinion setting forth my views.

[File endorsement omitted.]

[fol. 309] IN UNITED STATES DISTRICT COURT

The attached revised and corrected dissenting opinion on final hearing is herewith filed in above entitled cause.

F. E. Kennamer, District Judge.

DISSENTING OPINION.—Filed Oct. 17, 1931

KENNAMER, District Judge (dissenting):

Under the provisions of the Act approved February 11, 1915 (S. L. 1915, p. 35), Secs. 7954-7963, inc., C. O. S. 1921,

the Corporation Commission of Oklahoma is vested with jurisdiction to hear any proceeding instituted by any person, firm or corporation, or the Attorney General on behalf of the State, involving any questions relating to the enforcement of the act, and to determine all questions of fact involved in such proceeding.

The object of complainant's action instituted in this court is to restrain the enforcement of certain orders of the Corporation Commission restricting the amount of oil complainant may produce from its properties within certain oil fields in the State of Oklahoma. Such orders are designated as proration orders. The Statute upon which the proration orders are bottomed is herein attacked as unconstitutional, and the orders made under the authority of the Statute are attacked as unconstitutional in that they deny the complainant due process of law. The Act involved is set out in full in the majority opinion.

The material allegations of complainant's bill and the evidence introduced at the trial of the cause disclose com- [fol. 310] plainant to be a corporation organized and existing under and by virtue of the laws of the State of New Mexico, and has been duly authorized to transact business within the State of Oklahoma, with its principal office and business located in the City of Enid, Oklahoma. It is engaged in the business of producing, transporting, refining and marketing petroleum and natural gas, and their products. It owns and operates an oil refinery at Enid, Oklahoma, with a daily capacity of approximately 17,000 barrels of crude oil. It refines and manufactures gasoline, kerosene, lubricating oil, waxes, and other products. That in connection with its refinery it operates approximately 725 tank cars for the distribution of its refined products among its customers and trade in Oklahoma, Texas, Colorado, Kansas, Arkansas, and many other states. It has and operates approximately 470 miles of pipe lines for the transportation of its products; 263 retail gasoline filling stations, and 256 wholesale stations in various states. It has 45 producing oil and gas leases and many undeveloped leases, all representing an investment of several million dollars. It has made a large investment in leases in the Oklahoma City field and has several producing wells equipped at an expenditure of several hundred thousand dollars. On or about June 30, 1930, the Corporation Com-

[fol. 311] mission of the State of Oklahoma entered an order entitled "Order No. 5181, Cause No. 10146," which prescribed the allowable production from each of the principal oil producing fields for the State of Oklahoma, which included the complainant's properties, and prescribed rules and regulations governing the production of oil in said fields, and on October 28, 1930, made Order No. 5369, and from time to time and until within a few days of the trial of this cause have amended and supplemented said orders so as to prorate the amount of production that may be produced from the various properties of the complainant based upon the estimated potential production of the various oil fields of the State of Oklahoma. Said orders purport to allow from time to time the number of barrels of crude oil to be produced daily from the oil fields of the State of Oklahoma, and said orders recite in support thereof that the number of barrels of crude oil allowed to be produced represent the reasonable market demands for crude oil from said state. The defendants have appointed and designated as their agents to enforce the orders, Otto B. Bradford, commonly known as an Umpire, for the Oklahoma City field, and Ray M. Collins, known as an Umpire, for the state at large and especially the greater Seminole field. These Umpires are paid large and lucrative salaries [fol. 312] through voluntary contributions made by various oil companies operating in the various oil fields of the State. These contributing oil companies have formed and designated an "Operators' Committee." The "Operators' Committee" is composed of representatives of oil companies that are competitors of complainant in the business of producing, and refining or marketing crude oil and its by-products.

The jurisdiction of this court to determine the constitutionality of the statute and the orders entered under the authority of the statute was not seriously questioned at the hearing. This is not an action against the state in violation of the Eleventh Amendment to the Constitution of the United States. An action to restrain an officer of the state from acting under a statute alleged to be in violation of the Constitution of the United States, or otherwise violating a citizen's constitutional right, is not a suit against the state. See Ex Parte Ayres, 31 Law Ed. 216, 123 U. S. 443, 8 S. C. 164.

Mr. Chief Justice White, speaking for a unanimous court, in Home Telephone & Telegraph Co. v. Los Angeles, 227 U. S. 278, 57 Law Ed. 510, 33 S. C. 312, held that the pro- [fol. 313] hibitions and guaranties of the Fourteenth Amendment to the National Constitution are addressed to, and control, not only the states, but also every person, whether natural or juridical, who is the repository of state power, and among other things said:

"Here again the settled construction of the Amendment is that it presupposes the possibility of an abuse by a state officer or representative of the powers possessed, and deals with such a contingency. It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the amendment forbids, even although the consummation of the wrong may not be within the powers possessed, if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer. That is to say, the theory of the Amendment is that where an officer or other representative of a state, in the exercise of the authority with which he is clothed, *misuses the power possessed to do a wrong forbidden by the amendment, inquiry concerning whether the state has authorized the wrong is irrelevant, and the Federal Judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power.*" (Italics mine.)

Suits in the Federal Court to restrain the Oklahoma Corporation Commission from using the color of their office to [fol. 314] deny a citizen or corporation rights guaranteed by the Fourteenth Amendment have been frequently maintained. Oklahoma Operating Co. v. Love, 252 U. S. 331, 64 Law Ed. 596, 40 S. C. 338; Oklahoma Gin Co. v. State of Oklahoma, et al., 252 U. S. 339, 64 Law Ed. 600, 40 S. C. 341. See also Georgia Power Co. v. Decatur, 281 U. S. 505, 74 Law Ed. 999, 50 S. C. 369; L. & N. R. R. Co. v. Garnett, 231 U. S. 298, 58 Law Ed. 229, 34 S. C. 48; Lake Erie & Western R. R. Co. v. State Public Utilities Commission, 249 U. S. 422, 63 Law Ed. 684, 39 S. C. 345; Yick Wo v. Hopkins, 118 U. S. 356, 30 Law Ed. 220, 6 S. C. 1009; Virginia v. Rives, 100 U. S. 313, 25 Law Ed. 667; 25 C. J., Sec. 53, page 743.

In Langford v. United States, 101 U. S. 341-346, 25 Law Ed. 1010, Mr. Justice Miller, speaking for the court, said:

"The maxim, that the King can do no wrong, has no place in our system of constitutional law, as applicable either to the government or to any of its officers."

If the national courts did not possess this jurisdiction "the Constitution, steel framed, of the national fabric would fall in ruin." Free institutions, personal liberty and property rights would be destroyed. See Looney, Attorney General of the State of Texas, v. Crane Co., 245 U. [fol. 315] S. 178, 62 Law Ed. 230, 38 S. C. 85. Mr. Chief Justic White in disposing of the same contention made, at page 191 said:

"There is a contention to which we have hitherto postponed reference, that the court below was without jurisdiction because the suit against the state officers to enjoin them from enforcing the statutes in the discharge of duties resting upon them was in substance and effect a suit against the State within the meaning of the Eleventh Amendment. But the unsoundness of the contention has been so completely established that we need only refer to the leading authorities. Ex Parte Young, 209 U. S. 123, 52 Law Ed. 714, 28 S. C. 441; Western Union Telegraph Co. v. Andrews, 216 U. S. 165, 54 Law Ed. 430, 30 S. C. 286; Home Telephone & Telegraph Co. v. Los Angeles, 227 U. S. 278, 57 Law Ed. 510, 33 S. C. 312."

In Terrace v. Thompson, 263 U. S. 197, 214, 68 Law Ed. 255, 44 S. C. 15, the Supreme Court of the United States held:

"Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential in order effectually to protect property rights and rights of persons against injuries otherwise irremediable."

The conclusion reached by my distinguished colleagues "That the statute is too indefinite and uncertain to be sustained as a penal statute," cannot be seriously contra- [fol. 316] verted. The drastic provisions of the statute subject an oil operator to a penlaty of $5,000.00 fine, 30

days in jail, or both, in the discretion of the court when such operator committed economic waste, underground waste, waste incidental to production in excess of transportation facilities or produces his oil in excess of reasonable market demands, and that his property in a suit by the State, through the Attorney General or any County Attorney, may be placed in an indeterminate receivership. It was held in Connally v. General Construction Co., 269 U. S. 385, 70 Law Ed. 322, 46 S. C. 126, that

"Any statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

The power of the State to provide reasonable regulations to prevent actual waste, or wasteful utilization in the production and marketing of oil and gas, is well established. Ohio Oil Co. v. Indiana, 177 U. S. 190, 44 Law Ed. 729, 20 S. C. 489; Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 55 Law Ed. 369, 31 S. C. 337; Walls v. Midland Carbon Co., 254 U. S. 300, 65 Law Ed. 276, 41 S. C. 118. The reason for the rule is that waste of the natural resources of the State is not only detrimental to the common weal, but [fol. 317] also injuriously affects the rights of land owners over a common pool of oil or gas, and all such owners are entitled to an equal privilege of reducing oil and gas to possession. Ohio Oil Co. v. Indiana, supra. I cannot subscribe to the conclusion that the owners of land in a common oil pool own such oil and gas in common, and the right of one owner to reduce oil and gas underlying the surface of his land to possession is dependent upon the ability of another owner to reduce the oil and gas beneath the surface of his land to possession. No such rule of property exists in the State of Oklahoma.

The right of an owner of land within Oklahoma to drill wells and reduce oil and gas to possession which lies beneath his land is a property right protected by the Fourteenth Amendment to the Federal Constitution. The Oklahoma Supreme Court has repeatedly followed the rule that an estate in fee simple in lands in Oklahoma includes all oil and gas in place in and under the land so long as it remains therein, and the owner of such land has a vested

right to use it and to enjoy the profits accruing therefrom; since without the latter the former cannot be of value. Wright v. Carter, 97 Okla. 46, 223 Pac. 835; Green v. Biddle, 8 Wheat. 1-76, 5 Law Ed. 566; Terrace v. Thompson, 263 U. S. 315, 68 Law Ed. 274, 44 S. C. 15.

[fol. 318] In the case of Wright v. Carter Oil Co., supra, the Oklahoma Supreme Court said:

"The right to reduce oil and gas to possession is a valuable property right."

In the same case, the court held that

"oil and gas belong to the owner of the land and are a part of it so long as they are on it or in it and subject to his control, but when they escape and go into other lands, or come under another's control through the natural reservoir, the title of the former owner is gone."

Thus, an established rule of property has grown around oil and gas, and such property rights are subject to protection as other property rights.

In Ohio Oil Co. v. Indiana, supra, the Court said:

"On the other hand as to the gas and oil the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property."

In West v. Kansas Natural Gas Co., 221 U. S. 229, 55 Law Ed. 716, 31 S. C. 564, the court in referring to the opinion of the court in Ohio Oil Co. v. Indiana, supra, said:

[fol. 319] "It surely cannot need argument to show that if they could not be deprived of the right to reduce the gas to possession they could not be deprived of any right attached to it when in possession."

The trial court in the cited case, in construing an act of the legislature of Oklahoma prohibiting the transportation of natural gas in interstate commerce, held (172 Fed. 545) that natural gas found within the territorial limits of a state was not a product which the state may conserve and preserve by law as a thing in which the people of the state

have a common interest, as wild animals, but that it was an absolute property right, of which the owner cannot be deprived without just compensation.

The Supreme Court of the United States in Brown v. Spilman, 39 Law Ed. 304, 15 S. C. 245, 155 U. S. 665, at page 669, said:

"Petroleum gas and oil are substances of a peculiar character, and decisions in ordinary cases of mining, for coal and other minerals which have a fixed situs, cannot be applied to contracts concerning them without some qualifications. They belong to the owner of the land, and are part of it, so long as they are on it or in it, or subject to his control, but when they escape and go into other land, or come under another's control, the title of the former owner is gone. If an adjoining owner drills his own land and taps a deposit of oil or gas, extending under his neighbor's [fol. 320] field, so that it comes into his well, it becomes his property. Brown v. Vandergrift, 80 Penn. St. 142, 147; Westmoreland Nat. Gas Co.'s Appeal, 25 Weekly Notes of Cases, (Penn.) 103."

While the state, in the exercise of its police power, has the power, through appropriate legislation, to protect the public morals, health and safety, it cannot take private property from one person and transfer it to another for the private use and benefit of such person. The exercise of the police power is subject to constitutional limitations. "The chief restriction on this class of legislation is that vested rights must not be disturbed." Dooley's Constitutional Limitations, page 744.

In Lawton v. Steele, 152 U. S. 133, 38 L. Ed. 385, 14 S. C. 499, the court said:

"To justify the state in thus interposing its authority in behalf of the public, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with [fol. 321] private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other

words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the Courts."

The state has no title to oil and gas in place, and is without power to appropriate the oil and gas in and under the lands of one owner to the use and benefit of another owner. The only interest the state has under its police power is to prevent actual waste and to provide equal privileges to every land owner to reduce such products to possession and place them in the channels of legitimate commerce. The state exceeds its constitutional authority when, under the pretence of preventing waste, it attempts to regulate market demands, and for the purpose of regulating and controlling the price at which the owner of oil and gas, after it has been reduced to possession, must market such product. It is plain from the provisions of Section 2 of the Act that it is a price fixing statute. The act empowers the Commission to determine at what price oil and gas may be marketed. In the presentation of the application for temporary injunction counsel for the defendants conceded that Section 2 of the Act was invalid as a price fixing statute. The orders of the Commission recite that because of [fol. 322] market demands the daily production of the State of Oklahoma must be restricted to approximately 550,000 barrels of oil daily, and the Commission attempts by its orders, not only to restrict the daily amount of production, but also to prorate the markets among the various oil pools of the state. It is only reasonable to infer from the language employed in the orders of the Commission and all the evidence introduced on the trial of the cause that the sole purpose of the Commission in restricting the amounts of daily production in the State of Oklahoma was for the purpose of requiring all owners of oil and gas to market it at what is commonly termed the "posted price." The "posted price" is simply a price agreed to be paid by the purchasing companies whose representatives substantially constitute the "Operators' Committee."

It is the contention of counsel for the defendants that if the amount of oil to be produced is not restricted under the proration orders of the Commission it will result in waste through storage of crude oil, especially storage in earthen tanks. Aside from a rule prohibiting storage in earthen

tanks the Commission has in no manner undertaken to regulate the storage of crude oil. It is a matter of common knowledge that millions of barrels of crude oil are now confined in storage. If the Legislature deems storage of oil [fol. 323] in earthen tanks wasteful, and there is no evidence that such practice has been engaged in, during recent years, it can pass a brief act prohibiting such storage. The evidence is uncontroverted that the complainant in this case has been and is capable of producing, refining and marketing its products without waste.

Producing, refining and marketing crude oil is not a public service business. The producer does not devote his property to a public use so as to give the state the power to regulate it as railroads and other public utilities are regulated. Charles Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, 67 Law Ed. 1103; and Tyson & Bro. v. Banton, 273 U. S. 418, 71 Law Ed. 718. It is also well settled that the Legislature, neither directly nor through the Corporation Commission, can regulate or fix the price of crude oil. The producer has the right under the Fourteenth Amendment to the National Constitution to fix his own price. Williams v. Standard Oil Company, 278 U. S. 235, 73 Law Ed. 287; Tyson & Bro. v. Banton, 273 U. S. 418, 71 Law Ed. 718; Charles Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, 67 Law Ed. 1103; Fairmont Creamery Co. v. State of Minnesota, 274 U. S. 1, 71 Law Ed. 893; and Ribnik v. McBride, 277 U. S. 350, 72 Law Ed. 913.

[fol. 324] With all deference to the opinion of my associates, I cannot escape the conclusion that Section 4 of the Act is no more nor less than a part of the legislative scheme to fix prices for crude oil and that it does not provide for a fair and equitable proportionate taking by separate operators in the common pool. Section 4 does not purport to require equitable taking except "Whenever the full production from any common source of supply * * * can only be obtained under conditions constituting waste, as herein defined," which must mean that a person "having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total produc-

tion of such common source of supply," whenever, quoting Section 2, "there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum," as determined by the Commission. Section 4 means that whenever there is not a market at the price fixed by the Corporation Commission for "the full production from any common source of supply of crude oil or petroleum in this state" then "any person, firm or corporation having the right to drill into and produce oil from [fol. 325] any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom" and sold "at the well at a price equivalent to the actual value of such crude oil or petroleum" as determined by the Corporation Commission under the authority attempted to be conferred upon it by Section 2 of the Act. If this is not the correct construction and the Legislature intended to authorize the Commission to enforce in the oil fields "a just distribution, to arise from the enjoyment" by the operators in that field "of their privilege to reduce to possession," then why did not the Legislature prohibit an operator from pumping his wells unless his adjoining neighbor in the same pool has facilities for pumping oil from the common source (and an operator using a pump may restrain an adjoining operator from leaving open unproducing wells on his property the effect of which is to interfere with the action of the pump. Higgins Oil & Fuel Co. v. Guaranty Oil Co., 145 La. 233, 82 So. 206, 5 A. L. R. 411 and note; Bassel v. West Virginia Central Gas Co. 86 W. Va. 198, 103 S. E. 116, 12 A. L. R. 1398; Thornton on Oil & Gas, 3rd ed., vol. 1, sec. 32) and why did not the Legislature require an operator to shut down his offset wells in the event his adjoining neighbor's wells are choked up by drilling trouble or otherwise and [fol. 326] thereby prevented from producing? The so-called proportionate taking as provided for by Section 4 only becomes operative in flush pools or in pools the full production of which can not find a market "at the well at a price equivalent to the actual value of such crude oil or petroleum" as determined by the Corporation Commission. No provision is made prohibiting an operator from shooting his wells (Thornton on Oil & Gas, 3rd ed. vol. 1, sec. 33) and thereby artificially increasing the production of oil therefrom, although his neighbor may not be able to shoot his

wells. It is clear to my mind that Section 4 is nothing more than a mere mask behind which to disguise the price fixing features of the statute. Section 4 clearly contemplates markets and not an equal distribution of the oil in a common pool. If "a just distribution, to arise from the enjoyment * * * of their privilege to reduce to possession," using the language of the Ohio Oil Company case, was the purpose of Section 4 of the Act, it is strange it did not provide for taking into consideration acreage in figuring out the proportionate taking. Yet Section 4 says that an operator can take out "only such proportion of all crude oil and petroleum that may be produced therefrom, without [fol. 327] waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply." Acreage is ignored and an operator with two 5,000 barrel wells on 5 acres may take out of the common source of supply, under the provisions of Section 4, as much oil as an operator with two 5,000 barrel wells on 20 acres in the same field. Proportionate taking per well is wholly inequitable if the Legislature intends to secure "a just distribution, to arise from the enjoyment * * * of their privilege, to reduce to possession," because the operator with 20 acres has four times as much privilege as the operator with 5 acres in the same field. As further evidence that Section 4 is concerned with markets and not with proportionate taking, the Commission is authorized "to prevent unreasonable discrimination in favor of any one such common source of supply as against another," which must mean that the Commission is authorized to prorate markets because we can not attribute to the Legislature the absurdity involved in an authorization to the Commission to prohibit, for instance, the Oklahoma City field from draining the Seminole field or the Tonkawa field, separated by many miles and shown by the undisputed evidence to be incapable of draining any other field.

[fol. 328] Severing Section 2 from the Act and declaring or conceding its unconstitutionality does not take it out of the Act when we come to ascertain the legislative intent. An unconstitutional law or part of a law may be considered in order to ascertain the intent of the Legislature in another law or a part of the same law. Lewis' Sutherland Statutory Construction, 2nd ed. Vol. 2, Sec. 452.

The Illinois Supreme Court in Baird v. Hutchinson, 179 Ill. 435, 53 N. E. 567, said, "The meaning of the Legislature must be gathered from all they have said, as well from that which is ineffective from want of power, as from that which is authorized by law."

Mr. Justice Van Devanter, in Davis v. Wallace, 257 U. S. 478, 66 Law Ed. 325, 42 S. C. 164, applied this rule and said that

"Where an excepting provision in a statute is found unconstitutional, courts very generally hold that this does not work an enlargement of the scope or operation of other provisions with which that provision was enacted and which it was intended to qualify or restrain."

The Court in that case also held that declaring a section of a statute unconstitutional

[fol. 329] "does not make the provisions any the less a key to the intention of the legislature."

Section 2 permeates the whole statute. It is the foundation of the statute and without it Sections 3 and 4 are too vague and uncertain to vest any power in the Corporation Commission to make the rules and regulations assailed in this case. The Act nowhere undertakes to vest the Corporation Commission with power to define waste. See Hewitt v. Board of Medical Examiners, 148 Ca. 590, 84 Pac. 39; Cline v. Frink Dairy Co., 274 U. S. 445, 71 Law Ed. 1146.

As shown by the Commission's various orders from June 30th, 1930, down to date, it has purported to find a market demand for the entire State of Oklahoma, and then no doubt acting under the last clause in Section 4 of the Act, allocated those markets between various fields, a thing I do not believe the Legislature can constitutionally authorize as it in effect takes one man's market and gives it to another. In the Commission's order of June 30th, 1930, it found that the existing wells in Oklahoma following the 1st day of July would produce approximately 1,362,000 barrels per day and "That the daily demand in Oklahoma is and will be approximately 650,000 barrels per day during the months [fol. 330] of July, August and September, 1930." In the decretal part of the order it distributes this market among the various fields, naming them in a schedule setting forth

their estimated potential and estimated actual production. This same scheme was followed in the succeeding orders. The Commission in finding that the market demand in Oklahoma for certain months was a certain number of barrels evidently meant a market at the posted price, the then existing price, and not a market at a lower price. It is true that there may not be a market for more than 650,000 barrels per day at $1.07 a barrel, whereas, there may be a market for one million barrels per day at 75 cents per barrel.

Collins, umpire for the state at large, testified that although he did not make recommendations upon which the Commission assigned market demand in the Oklahoma City field for the month of January, 1931, he did make recommendations for the Seminole and the balance of the state, and that although he had nothing to do with assigning market demands to the respective fields he made recommendations to the Commission. On re-examination Collins testified that he tried to get an increase of the market demand for the Oklahoma City field but that in doing so he never considered the price; that he never tried to get a market at a price below the posted price because it would [fol. 331] be nearly impossible to find a seller, and that he had never considered it his business to try to get any market below the market price, all of which goes to show that the Commission's so-called findings of market demands were based on a finding of the ability to sell at the then posted price and not at a lower price.

Defendants point to the enormous waste of gas and casing-head gas in the Oklahoma City field and introduced D. B. Dow as a witness who testified that a valuation of six cents a thousand the total value of gas and gasoline wasted during the year would be $29,400,000.00 if the field were opened up. But the Commission had made no order requiring the producers to operate their wells on such gas-oil ratio as will conserve the gas. The Commission's orders have been directed at the suppression of the production of oil. During oral argument it was stated by counsel, and not denied, that the record before the Special Master shows that one 18 barrel oil well is operated under the Commission's rules in the Oklahoma City field at an expenditure of over 3,000,000 cubic feet of gas per barrel. The Commission must therefore either have construed Section 7964

of the Oklahoma Comp. Stats. 1921, as authorizing the waste of gas without restriction when produced from an [fol. 332] oil well, or otherwise has refused to enforce the statute passed in 1915 embodied in Sections 7920 to 7922, inclusive, of the Oklahoma Comp. Stats. 1921, prohibiting the production of natural gas in such manner and under such conditions as constitute waste and providing that "whenever natural gas in commercial quantities or a gas bearing stratum, known to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters." Not having taken any steps to conserve the gas as authorized and directed by the Oklahoma Statutes of 1915, embodied in Sections 7920 to 7922, Oklahoma Comp. Stats. 1921, my conclusion is that the Commission has not concerned itself with conservation of the natural resources but with the suppression of the production of oil in order to decrease the supply and thus increase the price.

The Statutes involved in Lindsley v. Natural Carbonic Gas Company, supra, Ohio Oil Co. v. Indiana, supra, and Walls v. Midland Carbon Company, supra, were enacted to prevent physical waste or the wasteful utilization of the oil or gas or water. There is no contention in this case that [fol. 333] the complainant has wasted or will waste any of the oil or use it for a purpose other than useful.

In view of the fact that the Oklahoma Act does not (a) take into consideration acreage, or (b) prohibit the use of pumps to create an excessive flow of oil, or (c) closing offset well or wells when a stoppage of an adjoining operator's well is caused by losing the casing or other accident, or (d) make any provisions for equitable taking except "where the full production from any common source of supply of crude oil or petroleum * * * can only be obtained under conditions constituting waste," which must mean where there is not a sufficient market at a fixed price for all the oil, I conclude that the Act and the orders of the Commission made in pursuance thereof were intended to accomplish one result and that is price fixing by regulating the law of supply and demand by statute and rules of the Commission.

In McMillan, et al. v. The Railroad Commission of Texas, et al., 51 Fed. 2d, 400, a recent decision by three Federal Judges, the court declined to be deceived by the Railroad Commission's proration orders purporting to have been made under the authority of the Texas oil conservation statute. Circuit Judge Hutcheson, speaking for the court composed of himself and District Judges West and Bryant, said:

[fol. 334] "*Presumptively valid though such acts are, courts, bound to give effect not to fictions but to realities, may not in construing them, close their eyes to what all men can see. Disregarding pretense, subterfuge and chicane, courts must, looking through form to substance, ascertain the true purpose of a statute not from its recitals of purpose, but from the operation and effect of it as applied and enforced.* Smith vs. Ry. Co. 181 U. S. 248; Bailey vs. Drexel Furn. Co. 259 U. S. 20; Lockner vs. New York, 198 U. S. 64; Meyer vs. Nebraska, 262 U. S. 390; Henderson vs. Mayor of N. Y., 92 U. S. 259; Chy Lung v. Freeman, 92 U. S. 275. * * *

"Especially must this be so when, as here, under the *thinly veiled pretense of going about to prevent physical waste,* the Commission has, in *cooperation with persons interested in raising and maintaining prices of oil and its refined products,* set on foot a plan which, seated in a desire to bring supply within the compass of demand, derives its impulse and springs from, and finds its scope and its extent in the attempt to control the delicate adjustment of market supply and demand, in order to bring and keep oil prices up." (Italics mine.)

In Near vs. State of Minnesota (advance Sheet, p. 842, No. 16), Mr. Chief Justice Hughes, speaking for the court, said:

"With respect to these contentions it is enough to say that in passing upon constitutional questions the court has regard to substance and not to mere matters of form, and [fol. 335] that, in accordance with familiar principles, the statute must be tested by its operation and effect. Henderson v. Mayor, 92 U. S. 259, 268; Bailey v. Alabama, 219 U. S. 219, 244; United States v. Reynolds, 235 U. S. 133, 148, 149; St. Louis, Southwestern Railway Company v.

Arkansas, 294 U. S. 350, 362; Mountain Timber Company v. Washington, 243 U. S. 219, 237."

I think the above rule should be applied in this case and if applied it is plain that the purpose of the Act and the Commission's rules and regulations is to control prices of crude oil.

Special counsel appointed by the Governor of the State to appear and represent the interest of the state on the trial of this case stated in his brief and in his oral argument that the practice of employing umpires, charged with the duty of executing the orders of the Commission, under the control of monopoly and paid by the Operators' Committee, was iniquitous. It is a matter of common knowledge that the Governor of the State just a few days prior to the final arguments on submission of this case to the court for decision, issued a public proclamation advising the purchasers of crude oil that unless the price was raised to one dollar per barrel he would close down by Executive Order all the prorated wells in the oil fields of Oklahoma [fol. 336] and call out the State Militia to enforce such order. It is a fact that he has executed such order by placing the wells of the complainant, and other producers, under martial law for the reason that the price of oil has not been raised to one dollar per barrel, and he bases his authority for such action, on the provisions of the Act in controversy. This constitutes a construction of the Act in question by the executive officers of the State. If there ever existed any doubt as to the intent of the legislature in vesting the Corporation Commission with authority to enter proration orders restricting the production of oil and gas from "any common source of supply," which has involved the production of oil in so much uncertainty, surely no such doubt can longer exist. The Act does not define "common source of supply," nor does the evidence shed any satisfactory light upon what is a "common source of supply." It only subjects the oil producer, under the circumstances involved, in speculation and conjecture and forces him to market his oil at the price determined to be in accordance with what the Commission determines to be reasonable market demand.

The Supreme Court of the United States in Yick Wo v. Hopkins, supra, held that public officers charged with the

administration of a law, thus representing the state itself, may so oppressively enforce the law so as to amount to a [fol. 337] practical denial of the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States. The court at page 373 said:

"Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

It does not only appear from the evidence introduced in this case that the orders of the Commission are grossly discriminatory, but we have the solemn admission of counsel representing the Governor of the State that the law in its operation under the sanction of the Commission is administered under the control of monopoly. Furthermore, it appears from the official pronouncements of the Governor of the State that he assumes the Act, authorizes price fixing and on that construction of the Act he has fixed a minimum price of $1.00 per barrel and has closed the oil fields until that price is paid. In addition to the admission of counsel for the Governor that the administration of the law is under the domination of monopoly, the evidence [fol. 338] discloses that the umpires, acting as the agents of the defendants in the administration of the law and in violation of the public policy of the State, are receiving lucrative salaries, one in the sum of $24,000.00 per year, with a large expense account, and the other in the sum of $7200.00 per year, from operating companies in the prorated oil fields, and that the orders of the Commission are based substantially upon information and evidence furnished by such umpires. Section 1570 C. O. S. 1921, makes it an offense for any executive officer to receive any emolument, gratuity or reward for attempting or deferring the performance of any official duty, and the person violating the same is guilty of a misdemeanor. Section 1561 C. O. S., 1921, makes any person who executes any of the functions of a public office without having taken and duly filed the oath of office as required, guilty of a misdemeanor, and

forfeits his right to such office. Umpires acting as agents of the Corporation Commission are public officers when appointed and selected in the manner required by the Act. The manner of selection and payment of the Umpires charged with the duty of administering the law is contrary to public policy and sound morals, and sufficient to render the orders of the Commission so administered as violative of the constitutional rights of the complainant. To say that the legislature has been in session since the [fol. 339] practice has been followed and has not corrected the evil is no protection to the complainant. See Somerset Bank v. Edmond, 76 Ohio St. 396, 11 L. R. A. (N. S.) 1171.

In Tumey v. Ohio, 273 U. S. 510, 71 Law Ed. 749; in an opinion by Mr. Justice Taft, the court said:

"But it certainly violates the Fourteenth Amendment and deprives the defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the Judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case."

Manifestly it is unfair to the complainant to be controlled by an umpire in the production of its oil, selected by and paid by its competitors. Such a course of conduct is unfair and fundamentally unsound, and the orders of the Commission authorizing any such course of conduct should be stricken down as violative of due process of law.

The Commission's power under Section 4 of the Act remains in a state of suspension until a legal gauge of each well has been made as required by Section 5 of the Act. The Commission can not delegate to the individual operators, private persons, the power to gauge their own wells under the supervision of umpires paid by private [fol. 340] persons and corporations. Before the Commission can make and enforce any order or rule under Section 4, if that section is valid, it must cause a gauge of the wells to be made by some state official or employee of the Commission. It cannot delegate that authority to the operators and make the report of the operators to the umpire conclusive evidence of the potential production of the wells. No operator can determine the amount he is permitted to withdraw from the common source of supply

"whenever the full production from any common source of supply crude oil or petroleum * * * can only be obtained under the conditions constituting waste," or determine what is an equitable and fair taking from a common source of supply until all the wells in the field have been legally gauged. The Commission could not delegate the authority to gauge wells to the Operators' Committee or to the operators themselves.

In State v. Crawford, 104 Kans. 141, 177 Pac. 360, 2 A. L. R. 880, the court said that

"The Legislature cannot delegate to private individuals and private associations of persons power to make obligatory rules concerning the management and care of property, nor provide that the breach of such rules shall be a penal offense."

[fol. 341] This principle is upheld in Washington, ex rel. Seattle Title Trust Co., v. Roberge, 278 U. S. 116, 73 Law Ed. 210, and Eubank v. Richmond, 226 U. S. 137, 57 Law Ed. 156, 33 S. C. 76, 42 L. R. A. (N. S.) 1123.

In my opinion complainant is entitled to a permanent injunction restraining the defendants from enforcing the rules and regulations insofar as they restrict the plaintiff's right to produce oil from its wells so long as it can do so without committing actual waste. The consuming public is entitled to purchase the refined products of crude oil in markets free from the control of monopoly and where fair competition prevails.

[File endorsement omitted.]

[fol. 342] In United States District Court, Western District of Oklahoma

No. 1156. Equity

Champlin Refining Company, a Corporation, Plaintiff,

vs.

Corporation Commission of the State of Oklahoma et al., Defendants

Final Decree—Filed Sept. 11, 1931

This cause came on to be further heard on this 5th day of August, 1931, and was argued by counsel, and the court hav-

ing made and filed herein its findings of fact and conclusions of law; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

That due notice of such hearing was given to the Governor who appeared throughout the trial thereof by his special counsel, Chas. J. West, and the Attorney General of the state of Oklahoma and to the other defendants in the suit, such notice so given being in all respects as required by Sec. 266 of the Judicial Code, Sec. 380, Title 28, U. S. C. A., and that the court has jurisdiction of the parties to, and the subject-matter of this action; that sections 1, 3, 4, 5, 6, 7 and 10 of the Act of the Legislature of Oklahoma, Session Laws, 1915, page 35, approved February 11, 1915 (being Sections 7954, 7956, 7957, 7958, 7959, 7960 and 7965, Compiled Oklahoma Statutes 1931), entitled, "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and con- [fol. 343] ferring authority on the Corporation Commission, prescribing the penalty for the violation of this Act, and declaring an emergency," are valid and are not in contravention of the Commerce Clause nor of the Fourteenth Amendment to the Constitution of the United States (except that, since it is not involved herein, the court does not pass upon the question raised as to the validity of the provisions of Section 6 of said Act authorizing the Corporation Commission of Oklahoma to punish as for contempt a violation of its orders, rules and regulations); that the orders, rules and regulations herein attacked by the plaintiff, which were issued by the Corporation Commission of Oklahoma pursuant to the said provisions of said Act and which are known as "Proration Orders," are valid and should be observed by the plaintiff; to all of which the plaintiff excepts; that Section 8 and 9 of said Act (Sections 7961 and 7962 of the Compiled Oklahoma Statutes, 1921), being the penalty provisions of said Act, are not valid; to which the defendants and each of them excepts; that the defendants, J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees be, and they are hereby perpetually enjoined and restrained from enforcing or attempting to enforce the provisions or any part thereof of said Sections 8 and 9 of said Act; to which the defendants and each of them excepts; that all other relief

sought by the plaintiff be and the same is hereby denied, to which the plaintiff excepts; and that each party shall pay its own costs herein laid out and expended; that jurisdiction of this cause is reserved to the extent of adjudging upon the order of June 13, 1931, any claims for damages [fol. 344] by reason of drainage or otherwise which may be asserted by the interveners or any of them against the plaintiff and to hear and determine matters pertaining to the bond given thereon to indemnify such interveners and adjoining or adjacent owners.

September 11, 1931.

John H. Cotteral, United States Circuit Judge. Orie L. Phillips, United States Circuit Judge.

I dissent to the foregoing except that portion thereof which holds invalid the provisions of Sections 8 and 9 of said Act and enjoins the enforcement thereof.

F. E. Kennamer, United States District Judge.

[File endorsement omitted.]

[fols. 345-408] Petition for rehearing and exhibits thereto, covering 64 pages, filed September 11, 1931, omitted from this print. It was denied and nothing more by order filed September 24, 1931.

[fol. 409] IN UNITED STATES DISTRICT COURT

ORDER DENYING PETITION FOR REHEARING—Filed Sept. 24, 1931

This cause came on to be heard this 16th day of September, A. D. 1931, on the Petition for Rehearing herein, and the Court having considered said petition and being fully advised in the premises, it is ordered, adjudged and decreed that said petition be and the same is hereby denied. To all of which the plaintiff excepts.

John H. Cotteral, United States Circuit Judge. Orie L. Phillips, United States Circuit Judge.

I am of the opinion that such petition should be granted and therefore dissent from the foregoing order.

F. E. Kennamer, United States District Judge.

[File endorsement omitted.]

[fol. 410] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants

Narrative Statement of the Evidence under Equity Rule 75-B—Filed Oct. 17, 1931

CAPTION

The following is Plaintiff-Appellant's condensed statement in narrative form of all of the testimony introduced together with all exhibits offered in evidence upon the final hearing in the above entitled cause upon behalf of Plaintiff-Appellant and pursuant to Equity Rule 75-B, lodged in the Clerk's office for the examination of the Defendants as provided by said Rule; together with like condensed statement in narrative form of all of the testimony introduced, together with all exhibits offered in evidence upon the final hearing in the cause upon behalf of Defendants-Appellees, said narrative statement in that behalf having been prepared by said Defendants-Appellees and accepted by Plaintiff-Appellant as so prepared without change or modification, except that Plaintiff-Appellant does not assume responsibility for the Defendants-Appellees' narrative of such testimony in the first person, thereby indicating affirmative statements in a form not so made.

That on the 29th day of June, 1931, the above cause came on for final hearing, pursuant to assignment before Honorable John H. Cotteral, Circuit Judge, Honorable Orie L. Phillips, Circuit Judge, and Honorable Franklin E. Kennamer, District Judge.

[fol. 411] APPEARANCES

That the following appearances were noted:

For the Plaintiff: Harry O. Glasser, H. G. McKeever, George S. Ramsey, Edgar A. de Meules.

For the Defendants: Jesse A. Ballard, Assistant Attorney General of the State of Oklahoma; W. P. Z. German, J. H. Miley, E. S. Ratliff.

For the Governor of Oklahoma: Charles J. West.

ERNEST J. SLATER thereupon called as a witness on behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he resides at Enid, Oklahoma, and is and has been Refinery Superintendent for the Champlin Refining Company for three and one-half years last past; was connected with a number of companies in various parts of the United States, in like and other capacities since 1906; that Counsel for the Defendants then admitted that Plaintiff has a refinery which he thought could be visualized without photographs, and thereupon specifically admitted the allegations of Paragraphs V and VI of the Bill, with the exception that some of Plaintiff's leases in the Oklahoma City field were acquired after proration was in force; that the further qualification was then made that

"We do not admit that there are no co-relative leasehold owners of oil and gas rights in the Garfield pool";

and did admit Plaintiff had drilled wells in the Oklahoma City field that "doubtless cost $1,250,000.00"; that Defend- [fol. 412] ants were not prepared to admit more than that said wells so drilled "have a large potential capacity"; that an effort to make further agreement upon the facts was suspended until the next day; that Plaintiff thereupon announced that before the witness be withdrawn, Plaintiff desired to offer in evidence an aerial photograph of its refinery identified as its Exhibit No. 1, and upon objection to its competency, relevancy and materiality, was over the objection of the Plaintiff excluded.

Witness thereupon withdrawn without further examination.

R. L. CLIFTON, called as a witness on behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination by Mr. Glasser, of counsel for plaintiff:

That he resides in Enid, Oklahoma, by occupation Geologist and Petroleum Engineer, and so employed by the Cham-

plin Refining Company for more than six years last past; holds the degrees of A. B. and A. M.; belongs to scientific societies, chief among which are American Association of Petroleum Engineers, and American Institute of Mining and Metallurgical Engineers; has had occasion to familiarize himself in a technical way with the Oklahoma City and Seminole oil fields, as well as all other fields in the State of Oklahoma; had known the Oklahoma City field area before any development was undertaken there; has prepared a chart identified as Plaintiff's Exhibit No. 7, and so offered as a part of the direct examination of the witness, upon which chart is shown the development of the area, the location of wells, the structural conditions of the field indicated by contours drawn on the top of the sub-surface bed known as the Checker Board lime;

That the east limit of the Wilcox sand or upper Simpson formation is delineated upon said map by a red line, so designated; that the limits of the Siliceous Lime or Arbuckle Limestone production are also delineated and so designated thereon by a red Contour line, that said map indicates the location of the Plaintiff's pipe line and its leases—colored in red—in the Oklahoma City field; that the [fol. 413] Plaintiff's pump station and tanks located in Section 30, Township 12 North, 2 West, are indicated upon said map; that the witness thereupon indicates by marking with blue pencil, the route of Plaintiff's pipe line within the area included upon said map; that said map, in so far as the witness has been able to check, is accurate as of June 1, 1931; that the location of the discovery well in the Oklahoma City field, is indicated upon the map by an arrow, above which is written the words, "Discovery Well"; that at this juncture, Mr. Ramsey, of Counsel for the Plaintiff, stated to the Court that

"The purpose of the map is to give some assistance in gathering the effect of the evidence. The Plaintiff proposes to show that there are four distinct oil producing zones in the Oklahoma City field, and that the Corporation Commission is and has been proceeding upon the theory that it is a common pool; that is, simply a pond of oil beneath the ground, and as a result thereof so classifying all wells in said field as from a common source for production purposes, which the Plaintiff claims to be highly discriminatory";

That said "Discovery Well" was completed December 8, 1928, into the Arbuckle or siliceous lime area at a depth of approximately 6550 feet; that the Wilcox sand is found from 6210 to 6450 feet;

That objection was made by Mr. German, of Counsel for the Defendants,

"to any evidence destined to support a contention that in the Orders complained of, the Corporation Commission has not separated the producing zones, so that the percentage of allowable production from one would be different from that in the others, for the reason that such question has not been plead and is not in issue";

that the objection was sustained by Judge Phillips, ruling that

"There is no issue presented by this Bill predicated on the fact that the Orders are general as to the several sands";

but that

"if Plaintiff desired to amend its pleading, it might do so";

[fol. 414] That the following Amendment of the Bill was thereupon dictated into the record:

"That the rules, regulations and orders of said Commission, as hereinbefore set forth, are void, in that without regard to the fact that oil, as produced in the Oklahoma City area, is so produced from four separate producing zones totally different in geological construction, and that oil may be taken from a given one of said zones without necessarily penetrating or in anywise affecting any of the remaining zones; and that by reason of such arbitrary Orders due effect has not been given to the discretion vested in the Corporation Commission by the complained of Act of the Legislature, wherefore the entire rules and regulations of the Corporation Commission in this respect, and all Orders entered therein are unconstitutional and void as discriminatory";

that objection to the Amendment was made, for the reason that it comes too late and introduces a new issue into the case, which objection was overruled by Judges Phillips and Kennemer, and sustained by Judge Cotteral;

Thereupon, a chart which had been marked as Plaintiff's Exhibit No. 8, was identified by the witness, as a chart which he had prepared, consisting of two figures;

Figure 1, being a representation of a normal Ordovician (geologic system or time division of rocks) column or section;

Figure 2, delineates the actual attitude or position of the ordovician geologic column or section of the Oklahoma City field;

that the word "Ordovician" signifies a time division in rocks of sedimentary origin as distinguished from primary rocks of igeneous origin;

That Figure 2 of said chart, discloses in detail an east-west cross-section of the Ordovician beds in the Oklahoma City field and indicates a buried faulted anticlinal ridge upon which truncation has removed the upper portion of the Arbuckle limestone near the "fault" line, indicated to the extreme right of the Figure by an inclined vertical line in black, and has likewise removed progressively westward the up-tilted beds overlying the Arbuckle limestone; namely, [fol. 415] the Johnson sand zone, the School Land sand zone, the Wilcox sand zone, and the Simpson limestone, which limestone is likewise indicated in blue color to the right of the "fault" line;

That overlying the defined plane of truncation exist a series of shales and limestones of the Pennsylvania age, which serve as a cap-rock to hold the oil and gas in the producing zones of the older Ordovician beds; that said Figure also indicates the location and depth of the Champlin wells in the respective producing formations in which each of same has been drilled;

That the "Discovery Well" did not penetrate any of the other producing zones by reason of the nature of the structure, as indicated by the chart; that the first series or bed in the field to produce is that area indicated as the Arbuckle limestone; that the next producing area is the Johnson (or Kinter lime) sand zone, which lies to the westward on the flanks of the truncated uptilted Arbuckle beds, and may be described as being composed of sandy limestones, Dolomitic limestones and sand, with the sands predominating, and is sometimes referred to as the basal Simpson formation, the local name in the field for this particular section being Johnson sand or Kinter lime section;

That the next producing zone is the School Land sand, which lies westward and on the flanks of the truncated, uptilted Johnson sand or Kinter lime section; this section consists of sands, sandy green shales, blue green shales, and thin beds of Dolomitic lime, very fine in texture and of low porosity;

The presence of water has not yet been shown in this section, although water has been found to exist in the Arbuckle limestone section to the east, and much water has been found in the Johnson sand or Kinter lime section immediately below the School Land sand to the east on the flanks of the structure;

[fol. 416] The oil and gas production in the Arbuckle, as well as in the Johnson or Kinter, is prolific, and is found in the School Land section in from three to five lenses; that the oil and gas production from this section, in the main, is not prolific, but the unusual fact remains that water does not seem to be present in the section;

That the next producing zone is the Wilcox, lying on the west flank of the School Land sand, and is by far the more prolific of all the producing zones in said field; that the recovery upon the average from the Wilcox area will be anywhere from 50,000 or 90,000 barrels per acre; from the Arbuckle limestone on the average 12,500 barrels per acre, and from the Johnson and School Land sands upon the average approximately 25,000 to 30,000 barrels per acre; that the Wilcox sand, depending upon where it is first encountered in the structure, varies from one foot to 160 feet in thickness; that the upper part of the sand is gone, the base thereof dipping from the east, arranges the sand so that it pinches out to the east; that wells located along the east limit of the Wilcox sand will therefore penetrate but a few feet thereof, while the ones located farther back will encounter the maximum thickness of the sand; that the Wilcox sand is noted for its high degree of permeability and porosity; that this sand, by reason thereof, permits a maximum space for reservoir, and is therefore capable of prolific and rapid production; that the Wilcox sand also carries water; that the Plaintiff's wells in the Wilcox sand area, so indicated upon the chart, are Central No. 1, No. 2, No. 3 and No. 4; Eckroat No. 1; Shilling No. 1 and Haden No. 1 (which also produces from the School Land sand of the Simpson formation); that McCalep No. 1 penetrates the

School Land sand zone and the upper part of the Johnson sand zone, and produces oil from four lenses of that part of the Simpson formation; that Seal No. 1 and Seal No. 2 have penetrated sands in the School Land sand zone only, and produce from no other section;

[fol. 417] That it is possible to simultaneously produce wells in the Oklahoma City field from,

(a) the Wilcox sand only;

(b) a part of the Wilcox and a part of the School Land sand;

(c) the School Land sand only;

(d) a part of the School Land sand and a part of the Johnron (or Kinter lime) sand;

(e) the Johnson (or Kinter lime) sand only;

(f) all of the Johnson (or Kinter lime) sand and a part of the Arbuckle lime area;

(g) the Arbuckle lime area only;

depending upon the location of the well on structure; in other words, production may be had in said field from any of the drilling combinations hereinbefore set forth; that the chart so identified as Plaintiff's Exhibit No. 8, conforms with the opinion of sound Engineers and competent Geologists;

That Plaintiff thereupon offered said charts as so identified in evidence, to which offer the Defendants object,

"in so far as it is intended to support the issue that the separate zones have not been separately classified by the Commission; otherwise, we have no objection.";

The objection was overruled, to which the Defendants except.

[fol. 418] Thereupon, a recess was taken until 2:00 o'clock P. M. of the same day, at which time Court reconvened and all parties present as heretofore, the trial of the foregoing cause was resumed and further proceedings had therein, as follows:

R. L. CLIFTON, was thereupon recalled as a witness on behalf of the Plaintiff and in substance further testified as follows:

That a paper which is marked as Plaintiff's Exhibit No. 9, is thereupon identified as a representation of a cross-section of the Oklahoma City field, drawn to scale, upon which is shown the geological conditions therein, with certain important data in connection therewith; that said chart so identified differs from the chart previously identified as Plaintiff's Exhibit No. 8, in that it does not divide the Simpson formation into zones, and is drawn according to exact scale for the purpose of simplifying, very materially, the larger chart identified as Plaintiff's Exhibit No. 8; that said chart as so identified, was thereupon offered in evidence, to which the Defendants object, for the reason that the same is incompetent, irrelevant and immaterial, which objection was overruled;

That the witness was acquainted with the area known as the Greater Seminole area; that a paper which is marked as Plaintiff's Exhibit No. 10, is thereupon submitted to the witness, and identified as a representation of an east-west cross-section of the Seminole area indicating the geological conditions found in that great structural uplift; that said chart was prepared by the witness, from well logs and subsurface data obtained from time to time;

[fol. 419] That objection was made by Mr. German, of Counsel for the Defendants, to the introduction of this evidence, upon the ground that it is incompetent, irrelevant and immaterial, and does not involve any issue in the case; that inquiry was made by Judge Phillips as to whether

"a different Proration existed in the Seminole area as to the different sands";

and upon being advised that Proration was there different "in percentage," the objection was overruled, to which ruling the Defendants were granted an exception;

That said chart is drawn to exact scale, and indicates the structural conditions in the Seminole uplift, which in the main, account for the vast accumulation of oil in the producing beds in that area, and particularly in the Simpson formation; that the Seminole area is a structural uplift or plateau on the north extension of the Arbuckle Mountains, its anticlines in Ordovician formations having accordant summits, over the extent of the plateau, with evidences of local faulting;

Thereupon, the Plaintiff offers in evidence as part of the direct examination of this witness the chart which has been

identified as Plaintiff's Exhibit No. 10, without objection upon the part of the Defendants; that the witness was thereupon requested to point out any material geological differences in the Oklahoma City and Greater Seminole fields; that in response the witness stated that the Oklahoma City field is a faulted anticlinal ridge, while the Seminole area is a structural uplift on the north extension of the Arbuckle Mountains; that the Simpson formation is one and the same in both areas, with lithological modifications to this extent, that in the Oklahoma City field the Simpson formation is a series of sand, sandy shales, sandy green shales, with thin Dolomitic limes, while in the Seminole area the Simpson formation is composed of thin beds of lime, [fol. 420] sands, and sands interbedded with some shale, in a lesser percentage, however, than is found in the Oklahoma City area; the Oklahoma City area has the additional variation of carrying the Simpson formation in a greater thickness than is found at Seminole; that the number of oil producing zones in the Oklahoma City area is greater than in the Seminole area, resulting in the separation of the Oklahoma City field into well-defined zones of production, as hereinbefore set forth, which condition does not exist in the Seminole area; that the producing zones in the Seminole area overlie each other in a parallelism of zones or sands over the general uplift, whereas due to truncation and type of structure such condition does not exist at Oklahoma City; in the Seminole area when a well is drilled into a given sand there is a possibility of producing simultaneously from another sand, and the same could be true of the Oklahoma City field, but in the Seminole area it is possible to produce from all of the sands in any one area through one well, and this is not possible in the Oklahoma City field.

That there are but three producing zones in the Simpson formation in Seminole, that carry oil; (a) Upper Wilcox, (b) Lower Wilcox, and (c) Simpson Dolomitic Lime above the Upper Wilcox;

That the Wilcox sand is a zone of prolific production in Seminole, as well as in Oklahoma City; and while the lower Simpson formation occasionally carries a little oil in the Seminole area, it carries much oil in the Oklahoma City area; that the Seminole and Oklahoma City producing areas are approximately 65 miles apart, and that the area between the two fields is a sinclinal depression defined as an area

"in which the rocks are down-pressed so as to form a saucer-shaped basin" the sands of which are impregnated with brine;

That the Seminole field is not a single oil field, but a series of structural fields within which there are some eight ac- [fol. 421] cordant summits, each representing a separate oil pool; that a well drilled into any one of said eight pools will not drain any oil from any other of the eight pools, by reason of the fact that each summit is isolated by synclinal depression between it and the other similar structures; that these synclinal depressions are filled with water in the producing sand, and that wells drilled off structure therefore find water instead of oil; that water pressure and water saturation of the sands thus preclude any connection between the well-defined eight accordant production summits of the Greater Seminole area; that these geological conclusions are generally admitted to be very certain, so that a well drilled in the Oklahoma City field will not in anywise affect any of the producing areas in the Seminole field, and conversely a well drilled in any of the Seminole producing areas will not in anywise affect any of the Oklahoma City areas; that the witness thereupon indicated the location of the following major fields in the State of Oklahoma; The Deaner pool near Okmulgee, about 40 miles from Seminole and 90 miles from Oklahoma City; the Tonkawa, 70 miles from Oklahoma City; the Garber, 75 miles from Oklahoma City; the Burbank, 95 miles from Oklahoma City; all of which fields so identified have been prolific producers;

That the witness was then asked

"if there was any scientific reason that would warrant an allowable production from any one of these fields, as against another, in percentage, that would be marked in the difference between two and eighty";

to which the Defendants objected, for the reason that the question called for a conclusion of the witness upon a question of law; The objection was sustained over the exception of the Plaintiff;

A paper which was then marked as Plaintiff's Exhibit No. 11, was identified as a compilation of the potentials allowed and market demand assigned by the Corporation [fol. 422] Commission, and as such, determined to apply to (a) the Oklahoma City field, (b) the Greater Seminole area,

and (c) the balance of the State; that the compilation was prepared by the witness from data obtained from Corporation Commission Order No. 5413; that the Exhibit No. 11 was thereupon offered in evidence as a part of the direct testimony of the witness, and objection thereto was made by the Defendants, upon the ground of its competency, relevancy and materiality, which objection was overruled and exception thereto granted the Defendants, and thereupon Counsel reads the Exhibit into the record;

That the method of taking potentials in the Oklahoma City field is thereupon detailed by the witness, which procedure as detailed was substantially as set forth in the Orders of the Corporation Commission; that there is no rational basis for the formula adopted by the Commission predicated upon scientific knowledge or geological experience; that taking a potential with neighboring wells closed in—as is done—tends to give the well being tested, an exaggerated flow; that in the opinion of the witness, the actual potential of the Oklahoma City field, upon a five-day test, would not be more than 2,500,000 barrels, rather than 8,963,977 barrels, as shown by the Umpire's report of June 1, 1931; that the Bureau of Mines estimate of the potential of the United States (three months before) was about ten million barrels;

In response to questions propounded by Judge Phillips, the witness stated in substance:

The eight million odd barrels is the Umpire's actual gauge which is the four hour flow of the wells multiplied by [fol. 423] six; the Corporation Commission then divides this by three and the result is a little above the witness's figure of two million five hundred thousand barrels, but the witness regards his figure of two million five hundred thousand barrels as extremely high.

Mr. Glasser resumes the direct examination:

That by the Commission's Order No. 5437, of February 10th, 1931, the practice of arbitrarily dividing the potential carried upon the books of the Corporation Commission for the Oklahoma City field by the figure three (3), was inaugurated; the witness remembers the decision which was handed down on February 9, 1931, upon the second application for an interlocutory injunction in this cause; being

asked what is meant by gauging a well the witness stated that in petroleum engineering, and it is so considered in the oil industry, that after a well flows and maintains its flow it is gauged for an hour, or several hours, a day, or several days, and from that gauge a study of the number of barrels made daily is determined; gauges may be just at one time, for one hour, one day, a week or a month, and taking the sum total in each instance; that to gauge a well is meant a test that will determine what such well will make when flowing under normal conditions; that in the industry, a purchaser of oil producing property would require a gauge, for the purpose of obtaining the normal, reasonable and accurate flow of the well over a period of time of sufficient length to determine what the ultimate actual recovery of the well will be; that such purchaser would not be interested in knowing what a well that had been previously shut in for an indefinite time, would make in four hours, with all off-sets shut in; that such test would not be a reasonable gauge under any circumstances for any well; that in the industry when a gauge of a well is taken, using that term as employed in contracts of purchase, or engagements that have to do with oil properties, an actual test for thirty days is made and the gauge for the last day determines the pro- [fol. 424] duction of the well; that in the opinion of the witness the method employed by the Corporation Commission for the determination of the potentiality of wells in the Oklahoma City field does not reflect the normal reasonable production of the well so tested, at the end of the artificial method of calculation that is employed; the reason for this from a scientific standpoint is that the well that is on open or four-hour flow has been previously shut in for sixty-five days or for two days or one day and during that shut-in time underground pressure is built up so that when the well is opened up to flow its four-hour potential it makes in that four hours more than it will make in any other four hours during the next ensuing twenty-four period, which result is naturally due to the fact that it flows when the off-set wells are shut in and that the well being thus tested has been shut in for a day or more and the four-hour flow represents nothing but an unnatural and stilted potential of that well;

Examination by Judge Phillips:

By Phillips, J.:

"Q. If you were going to get what you conceive to be a proper basis you would have to run it four or five days?

A. At least that.

Q. You would have to run all wells at the same time?

A. Certainly.

Q. Well, if you have a situation where proration on approximately the basis of the present production was required, it would be impracticable to make an accurate test wouldn't it if you would run four or five days, you would run so much oil you would destroy your proration?

Mr. German: Haven't any tankage.

A. In a case like that if operators are not going to fortify themselves with adequate steel storage and other facilities for taking care of their properties, I don't know how we could provide for their helplessness.

Q. There isn't any practicable way if you are going to have proration to turn all wells loose for five days is there? [fol. 425] In other words, don't you have to come to some approximation or some estimate according to your figures? According to your estimate this is 19 per cent too high.

A. Yes, under my figures. I would like your Honors to keep this in mind that the Corporation Commission divides by three the four hour flow multiplied by six and allows 6.25% to conform to the market, which is like leaving the figures as they were and allowing 2.08%. The system is the same. It is merely a matter of computation, and not necessarily reducing the potential down to what it ought to be."

Mr. Glasser resumed the direct examination of the witness:

That all of this ramification of arbitrary figures, but reflects what has been previously and in some other place determined to be the market demand of that field; that the Indian Territory Illuminating Oil & Gas Company owns 65% of the total area of the Oklahoma City field, and 294 producing oil wells thereon (of a total of 744 oil wells in the field), of a total potential of 1,858,837 (of a total poten-

tial in the field of 8,963,977); that the allowable daily production for said Company may be obtained by multiplying its potential as herein given, by the percentage figures 2.08; or divide the potential as herein given by 3 and multiply the quotient by the percentage figures 6.25, obtaining in either event the identical result;

That the witness was familiar with the way potentials were taken in the Seminole area and in the early part of proration history in the Seminole area the potentials were taken by the employees of the company owning the well which was being so tested; that the offset owners might suit themselves about being present; that later the offset owners were notified to be present. After adoption of that rule, the owners prepared their potentials among themselves; that the Umpire could not send his personal representatives to all wells in the Seminole area and made no attempt to do that. He did the best he could, sending his representatives as often as possible and being present him-
[fol. 426] self in some cases so that the custom of the potentials being taken by the company men grew, one witnessing the potentials for the other, which practice is still in effect today; that the witness never knew of a potential being taken in Garber or Tonkawa, or in many parts of the Osage or down in the Okmulgee District; that the witness does not know of any proration at all in the Garber field, but was of the opinion that there is a Commission Order to the effect that such field should not be prorated;

That so long as the method employed in the taking of the potentials in the Oklahoma City field shall be utilized, the result thereof will be nothing but an arbitrary guess; that the witness does not know—and has never heard—of any method in the industry in which the actual production of the field can be determined so long as producing wells are closed in, or not allowed an unrestrained flow.

Cross-examination by Mr. German, of counsel for the defendants:

That by building storage and making other preparation at the proper time, the wells in the Oklahoma City field could now be produced on open flow upon full time without "flowing oil out on the ground and running it down the creek"; that it would not be necessary to build storage to take care of the first day's production, i. e., two, three or

four million barrels of oil; that the maximum of the entire field for the first day's production thereof, would be not more than 2,500,000 barrels; that the witness's estimate was based upon scientific methods of computation, with con- [fol. 427] sideration given to other factors, which include the past history of the field, the saturation and character of the sands, the methods under which the wells were produced, by which the flow from a high potential such as we are lead to believe exists in the Oklahoma City field, might be reduced to what I think it actually would be; that in the opinion of the witness there is no rational basis in the Commission's Orders for the division of its "exaggerated potentials" by the figure "3"; that such application of division by the figure "3" but creates another formula that results in the same end that was obtained in the use of the former formula; that the witness was thereupon asked,

"Q. Then why do you say the Commission's conclusion they should divide by three does not arrive at a fairly correct potential?

A. For this reason, the Corporation Commission for January figured the market outlet for the Oklahoma City field was 85,000 barrels. They figured if they computed on the basis of a potential of something like 5,000,000, they would have to use 2.08 per cent. They figured if they would divide that potential by three they would have to multiply that by 6.25, so the method is the same, whether they use 2.08 per cent. or 6.25 per cent. It is figured on the potential of the field.

Q. You have not answered my question.

A. I can't answer it the way you want it. I answered it my way.

Q. No, you said the Commission found the potential at about 2,500,000.

A. No, I didn't say that.

Q. That increased the percentage to 6.25 instead of 2.08?

A. They were going to allow the Oklahoma City field 85,000 barrels of oil and in order to arrive at what percentage of potential they would allow it, or use in the computation to arrive at what the field's outlet would be, they had two ways of doing that based on the same thing. One way was to divide the potential by three and multiply by 6.25 per cent. The other way was to leave the potential

like it actually was and multiply by 2.08, and both systems got the same result.

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[fol. 428] Q. Anyhow, the result they got was to arrive at a fairly correct potential, was it not?

A. They did not say so. The only reason they used potential at all was to see how they would dispose of 85,000 barrels, whether they would divide the potential by 6.25 or 2.08."

And again Counsel admonished the witness that he had not yet answered his question

"as to why the Commission's system is not practicable and rational, as nearly as your own?"

to which the witness replied that

"My system is based on what I consider scientific data and their system is based upon convenience in the disposition of 85,000 barrels of oil, whether it be done by the application of the percentage of 6.25 or 2.08";

That the actual potential of the Oklahoma City field, as calculated by the witness, would be from 2,000,000 to a maximum of 2,500,000 barrels per day, and that as calculated upon the formula employed by the Commission would indicate an actual potential of 2,600,000 barrels; whereupon, Judge Phillips interrupted to say that the potential as calculated by the formula would be 2,900,000, approximately 19% above the estimate of the actual, by the witness;

That the pools in the Greater Seminole area are separated as much as four miles apart; that in the Oklahoma City field approximately 40% of the wells penetrate more than one sand; that when more than one sand is penetrated and production simultaneously obtained therefrom, oil may go from a higher to lower producing area, if the rock pressure in the lower bed has been materially lessened, but that oil in the lower producing bed will not, under any circumstances, find its way into the upper; that there is normal rock pressure in all of the producing beds, which varies according to depth; that in a well 6500 feet in

depth, the rock pressure would be normal at 2400 pounds to the square inch; that if the pressure in one formation be higher than the pressure in the other, and the two for-
[fol. 429] mations be connected by several oil wells, the gas pressure from one area so penetrated will flow to the other; that when an oil and gas well is opened, it produces by reason of lowered pressure;

That whenever there is a released pressure at some point in the formation, the oil and gas does not tend to flow towards that place to equalize the pressure in the formation; it is universally conceded that oil and gas come out of a well because there is opportunity for pressure to escape; the witness accounts for the fact that some of the wells in the Oklahoma City field produce seventy-five to eighty thousand barrels of oil in the first few hours they are open, because immediately around the well-hole there is a release of pressure. That there is a hydrostatic force in the sand immediately around the well and the rate of movement into the hole is limited at first to a very narrow zone around the well and whether it produces a large amount of oil or gas, depends upon the porosity, the permeability and the amount of rock pressure; that the lessening of pressure gradually spreads back, and within certain limits the diminution in pressure rapidly spreads as oil and gas come out of the hole; that the Plaintiff does not have any wells in the Arbuckle lime in the Oklahoma City field.

Redirect examination:

That the method which the witness outlined in his direct testimony as to what, in his opinion, would be a better method of determining potentials in the Oklahoma City field, was merely his opinion and that the plan that he had suggested might be just as much out of line, as a matter of fact, as the plan that the Corporation Commission was using, unless, the wells be opened and an actual test be run; that one scientist always believes his formula to be better than that of another, but that in any event, "my own, or the Commission's, or any other person's" formula remains an arbitrary creation; that the witness's estimate
[fol. 430] of the total potentials in the Oklahoma City field being as much as 2,000,000 or 2,500,000 barrels per day, is

but the witness's estimate; that if the wells were all opened in that field for as much as fifteen days, the field might lack a lot of producing that much oil upon a given day; that it is impossible to gauge a well accurately so long as the offsets to that well are shut in; that none of the Champlin wells in the Oklahoma City area have been producing with physical waste; that said wells have been completed to production in the most approved fashion, in so far as the industry knows, and have been drilled in a workmanlike manner and so completed; that none of the Plaintiff's wells show "water" and that the Plaintiff has been careful not to drill any of said wells too "deep" using modern equipment and appliances to produce the wells in a manner that will not, and does not, create physical waste and that said wells will continue to be produced so that no physical waste will take place on any of the Plaintiff's properties; that in so far as the witness knows, every approved method of completing and producing wells in the Oklahoma City field has been employed by the Plaintiff; that the Plaintiff has had some fishing jobs on some of the wells, but that they were incident to the drilling of said wells.

Recross-examination:

That by physical waste is meant the running or spilling of oil on the ground, that is,

to waste it on the ground, * * * as a pipe line leak, to destroy a commodity, the utilization of which does not give the greatest efficiency in return to the owner of that property; * * *

that the plaintiff company

has not poured any oil on the ground, has not spilled any on the ground, or let it run down the creek, and that none of it has been put to any use that the Plaintiff Company does not believe to be beneficial.

[fol. 431] When asked if that is what the witness means by physical waste, he responded:

"That isn't all I mean—I mean that much at least."

That the figures 5,388,298 on Plaintiff's Exhibit No. 11, as the potential of the Oklahoma City field for January,

1931, were so carried upon the records of the Corporation Commission without the division by three, that being before the time when the Commission adopted the rule of dividing by 3; that while the Oklahoma City field potentials are now arbitrarily divided by 3, Seminole is not so divided, nor are any other parts of the state so divided; when they took a ten day open flow of the wells in part of the pools in the Seminole last Spring, they had adequate storage capacity to take care of the oil.

Redirect examination:

That if any oil, in saturation with mud, be blown into the air and deposited on the ground upon completion of the well, such loss of oil is not considered to be "waste" for such loss is incident to the completion of any well; that the witness meant to include what may be defined as premeditated waste; that thereupon Mr. Miley, of Counsel for the Defendants, stated that the Defendants did not claim that the Plaintiff "ran any oil on the ground."

Witness excused.

WIRT FRANKLIN, thereupon called as a witness in behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct Examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives at Ardmore and Oklahoma City, is engaged in the oil business, operating principally as the Wirt Franklin Petroleum Corporation in the producing, refining and marketing branches of the business; has been for eighteen years so engaged in producing crude oil and for part of [fol. 432] that time, in refining and marketing the same; is associated with the Cromwell-Franklin Company and has an individual interest in some ninety wells in the Oklahome City field, upon which the total potential of the working interest (with which the witness is associated), is about 462,000 barrels per day; that Glenn Grimes, Geologist for the Wirt Franklin associated interests, with the assistance of a committee of Geologists, has prepared a map which

is a part of the witness's petition for a classification of producing zones in the Oklahoma City field, then pending before the Corporation Commission, which is marked as Plaintiff's Exhibit No. 12, and thereupon identified by the witness as a map "intended to outline the different producing zones in the Oklahoma City field"; that part in red, the producing area covered by the lime production; in blue, the lower Simpson sands below the Wilcox; and in yellow, the Wilcox sand proper; that the map was prepared by a committee of five Geologists, including Glenn Grimes for the witness's associated interests, Mr. Van Dall of the Sinclair Company, Mr. Clawson of the Indian Territory Illuminating Oil & Gas Company, Mr. Paschal of the Coline Company, and Mr. McGee of the Phillips Petroleum Company; that the white spots on the map indicate lime wells which have ceased to produce oil, have gone to water, have been plugged back and are now gas producing wells from upper sands in the Pennsylvania formation; that the committee of Geologists which prepared the map agreed that it accurately set forth the situation as then existed in said field; that Plaintiff thereupon offered in evidence the Exhibit so identified, as Plaintiff's Exhibit No. 12, as a part of the direct testimony of the witness, Wirt Frank, to which Exhibit the Defendants objected for the reason that the same is incompetent, irrelevant and immaterial, in so far as it may relate to any issue that may refer to a classification of the different producing areas in the Oklahoma [fol. 433] field as among those different areas, which objection was overruled; to which the Defendants were granted an exception; that the witness recalled having appeared before the Corporation Commission at its meeting of January 26, 1931, in support of his Petition for an increase of the allowable flow from the Oklahoma City field; the substance of which Petition, the witness remembered; that the witness was asked to briefly recount what occurred at said meeting at said time, to which the Defendant objected and the objection was sustained.

That Plaintiff thereupon sought to have admitted in evidence the transcript of the testimony of the witness given at hearing before the Corporation Commission on January 26, 1931, commencing on page 21 and including 35 thereof, together with comment of the Members of the Commission as the matter progressed; not, however, for the purpose

of showing that any Order of the Commission was not based upon evidence, but for the purpose of showing the then attitude of the witness toward Proration, which request was denied by the Court over the Plaintiff's objection;

That the witness is the same Wirt Franklin who filed the petition upon which the proration orders were made for more than a year, but ceased to be the principal petitioner in October, 1930; until that time the witness had prepared or had filed or there had been filed in witness's name all of the petitions upon which the state-wide proration orders had been made;

That thereupon the witness re-stated that the total potential for the working interest in the wells in the Oklahome City field in which he was associated in ownership, was 462,000 barrels per day, and that the allowable daily production therein was 9,240 barrels; that the associated ownership thereof has not been able at all times to find a market for that allowable daily production and had been underrun nearly all of the time; "However, we are nearly even right now;"

[fol. 434] That by "underrun" the witness means that the purchasers of oil have failed to take the production that was allowed to be produced under the orders; that at times the witness's companies had been underrun more than 500,000 barrels, notwithstanding strict compliance with all the rules and regulations incident to proration orders; that the witness was unable to say why his companies were so greatly underrun, except that "they just wouldn't take it," and that at the time the witness's associated companies were underrun 500,000 barrels the price of oil was $1.36 per barrel, and that at that time the pipe line companies cut the price 35¢ per barrel; that much discussion and argument was precipitated by the question following this statement, in which the witness was asked to identify the pipe lines which might have taken such oil; that objection to the question was sustained by Judge Cotteral, with the observation that "I don't think you can attack the orders of the Commission in this way"; to which ruling the Plaintiff was granted an exception; that the witness was thereupon asked if he could have disposed of his oil at that time, if he had been willing to take 60¢ per barrel for it, when the posted price was $1.00. Objection was renewed thereto and sustained, to which the Plaintiff was granted an exception;

That the witness was thereupon asked if he had been made an offer below the posted price and had refused to sell thereon, to which objection was renewed and again sustained over the exception of the Plaintiff; that thereupon the Plaintiff offered to prove by the witness that an offer had been made to the witness at a price less than the posted price and that the witness and his associated companies refused to dispose of any oil below the posted price and that the witness will testify, if permitted to do so, that he did not wish to break the market or sell any oil at a price below [fol. 435] the posted price, and maintained the posted price at a financial loss to his associated interests, to which offer Mr. Miley of Counsel for the Defendants, objected for the reason that the offer as made, is and was incompetent, irrelevant and immaterial. The objection so made, was by the Court sustained, to which ruling the Plaintiff was granted an exception.

No cross-examination.
Witness excused.

John H. Wiggins, thereupon called as a witness in behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives in Tulsa, Oklahoma, is a Petroleum Engineer, a graduate of Stanford University, 1911 and 1915, is acquainted with the business of steel tankage; that in the most approved type of tankage, it is possible to store oil with practically no loss in the so-called gas-tight tanks; that is, tanks which have roofs that are gas-tight and are properly equipped with vent valves to prevent air from flowing in and out of the tanks; that on 38 to 40 A. P. I. crude oil in Oklahoma, the loss for the first year measured by volume when stored in 80,000 barrel tanks, would be about 1%; that the witness has heretofore been connected with the United States Bureau of Mines in 1910 and assigned to the problem of determining evaporation loss in the Mid-continent Feld; that he prepared Bulletin No. 200 of the United

States Bureau of Mines, which related to losses under the conditions of storage at that time; that a year or so later, the United States Bureau of Mines published another technical paper No. 319, in which the witness outlined a method by which oil could be stored by modern equipment with [fol. 436] practically no loss; that at that time the method for practically no loss was not available; that during the past ten years, equipment and methods of storing crude oil have greatly improved; that at the present market the approximate cost of the best type of 80,000 barrel steel storage, completely constructed, is about 25¢ per barrel, which cost includes part of the cost of the grade and pipe, the cost of the land, and connecting the tanks with pipes; that such a tank so constructed, will be useful for twenty to thirty years; that the cost of oil storage now is much cheaper than it was in 1919; that the loss by volume in gas-tight 80,000 barrel steel tanks, with cone roof and air vapor space in the second year will be .8 of 1%, in the third year .7 of 1%, in the fourth year something less than in the previous year, being a gradually decreasing loss; that in five years the total loss would be practically between 3½% and 4% in that kind of tank, measured by volume.

Cross-examination.

By Mr. Miley, of counsel for defendants:

That the loss in 55,000 barrel tanks, which in 1919 was the standard size, as well as in 37,000 barrel tanks with so-called wooden roofs which were "air leaky," amounts to about 3½% the first year, with a decreasing amount in subsequent years; that the witness was fairly familiar with storage facilities in Oklahoma generally; that in the Oklahoma City field the loss by volume in 80,000 barrel modern steel tanks with cone roof, is 1% rough; that the witness knows of twenty-eight 80,000 barrel tanks of such type in the Oklahoma City field owned by the Sinclair Company; that when asked whether the other companies generally have storage in said field, the witness stated that to his certain knowledge there is not a very great amount; when asked whether the only oil that is stored in the Oklahoma City field is what is called "lease storage," the witness stated that he did not feel competent to testify as to storage in the Oklahoma City field outside of the tankage with which

[fol. 437] he was acquainted; that the estimate of 25¢ per barrel for cost of tankage would vary with the cost of land and that in a city such as Oklahoma City, where land is higher, prices might vary a few cents comparatively; that there is a small expense incident to storing oil in such tankage which will add something to the cost of the tankage; that after the oil is in storage, the principal cost of maintaining such storage would be fire insurance, interest on investment, with taxes, if any; that the insurance rate on the best type of storage is about 35¢ a hundred dollars worth a year, a comparatively low figure; that the type of storage tank that was in use in 1919 is now practically out of service; that the Prairie Oil & Gas Company is one of the largest storers of oil in the Mid-continent Field, and that that Company has comparatively recently changed a great proportion of its storage to the gas-tight type; that the estimate of the witness of the loss in storage of 1%, was partly the result of an investigation that he had made for the Prairie Company in 1919 when he investigated "a lot of their tanks";

That there is a very small deterioration in quality of crude oil in storage, but that such deterioration is due to the loss of gasoline content which extends so long as such crude oil remains in storage; that incident thereto is the intrinsic value of such loss; that the witness is interested in the type of roof concerning which he has testified, having been the inventor thereof and realizing a royalty from the use of the same; that the patent is owned by the Continental Bridge & Iron Works of Chicago; that if a storage tank about which the witness has been testifying remains in one place, it will usefully serve for twenty to thirty years, but that if after two or three years the oil is sold and moved out of the tank, the tank has comparatively little salvage value; that to be used somewhere else the [fol. 438] tank would have to be torn down and moved and that would consume practically all of its value.

Redirect examination:

That the witness has personal knowledge that there is something over 500,000,000 barrels of oil in storage in the United States scattered in most of the oil-producing states and at refineries; the principal storers in California are the Standard of California, the Shell Corporation and the

Union Oil Company; in the Mid-Continent the principal storers are the Humble Oil & Refining Company, the Prairie Oil & Gas Company, the Standard of Indiana, and the witness does not know how much the Sinclair has, although it has a good deal, nor does the witness know how much the Shell Petroleum Corporation has; the witness does not know as to the principal storers in the eastern part of the United States; that the cost of construction of said 80,000 barrel steel tank of the type about which the witness testified would be, the tank itself about $20,000.00, and the other cost would be added to that; that such cost is the first cost and is not the cost every time the tank is filled.

Witness excused.

That thereafter ERNEST J. SLATER, *is* recalled by the Plaintiff, further testified upon redirect examination in substance as follows:

Redirect examination.

By Mr. Glasser, of counsel for plaintiff:

That the Champlin Refining Company uses gas-tight, steel storage tanks (for crude oil) at its Enid refinery, of 55,000 and 80,000 barrels capacity, with a total storage capacity of 645,000 barrels;

That the evaporation, measured by volume, from such [fol. 439] type of storage tank will not exceed 1% per year;

That on June 24th, 1931, the Plaintiff had in such storage 52,393 barrels of gasoline, and 75,984 barrels of crude oil; that the refinery was upon that date processing 16,000 barrels of crude oil, and shipping fifty cars of finished product per day; each such car containing approximately 190 barrels of such refined product; that such day's total shipment was the equivalent of about 10,000 barrels of gasoline per day;

That thereupon Judge Phillips addressed certain questions to the witness, which were in their respective order, answered as follows:

By Phillips, J.:

"Q. What percentage of deterioration is there in the oil from storage?

A. In volume you mean?

Q. Well, as I understand it, if you store oil the lighter vapors are the ones that you lose?

A. Yes, sir.

Q. And that means you lose some gasoline content?

A. Yes, sir.

Q. What percentage of loss is there in gasoline content?

A. Well, in these steel gas-tight storage tanks there is never over one per cent lost.

Q. That is by volume?

A. Yes, sir.

Q. If you refine that oil immediately you can recover a little more than if you let it stand for a year and then refine it?

A. It would be very small.

Q. Negligible loss?

A. Yes, sir";

That 109 types of product are manufactured at Plaintiff's refinery; a list thereof by trade name being identified as Plaintiff's Exhibit No. 13, offered as a part of this [fol. 440] witness's direct testimony, and admitted over the objection of Defendants;

That the Plaintiff's refinery was then processing 14,000 barrels of crude oil per day, approximately 85% of its capacity; that Plaintiff's gasoline storage was decreasing at the rate of 2,000 barrels per day; that on that day (June 29, 1931), the Plaintiff had on hand in all of its storage tanks 44,300 barrels of gasoline, and that if the same ratio of decrease continues into that storage, it will be exhausted in 22 days' time.

No recross-examination.

Witness excused.

H. M. STALCUP, thereupon called as a witness on behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives in Tulsa, Oklahoma, is engaged in the oil business with the Skelly Oil Company in the capacity of

Vice-President in charge of Production; and has been so employed for five years and two months; and has been more than fourteen years in the oil business; that he has had occasion to consider the ratio in which oil and gas are being produced in the Oklahoma City field, as a result of the effort to operate efficiently the Skelly properties in that field;

That by gas-oil ratio is meant the volume of gas produced by a given well measured in the ratio of cubic feet of gas utilized to produce a barrel of oil; that in the Wilcox sand the ratio should be not less than 700 nor more than 2,000 cubic feet to the barrel of oil, 700 being the minimum and 2,000 the maximum for ideal production;

That the least gas-oil ratio in the Oklahoma City field of which the witness has heard, was a matter of 300 or 400 [fol. 441] cubic feet to the barrel of oil, as against a high of several hundred thousand feet; that a ratio of several hundred thousand cubic feet of gas to a barrel of oil could most likely be brought about by structural conditions of the producing formation, or improper completion of the well in setting the casing too high, or landing the flow-string in a position in the producing horizon too far above the saturated oil sand, which would allow a great amount of free, dry gas from either a separate sand or a portion of the oil sand, to needlessly enter the flow-string; that in the opinion of the witness, this is cause for the excessive gas-oil ratio that exists in some of the wells in the Oklahoma City field; that such situation can be remedied by following a directly opposite course, that is, landing the flow-string where it should be landed at the top of the oil saturated portion of the horizon, and in some instances the running of a smaller size tubing would partially remedy the effect; but such reconditioning will not help an extreme case of several hundred thousand cubic feet per barrel;

That the Skelly Oil Company has produced one of the largest wells in the Oklahoma City field upon a gas-oil ratio of approximately 500 cubic feet of gas to the barrel of oil; that such result was accomplished by carefully coring at the top of the horizon in which it expected to produce oil, analyzing the sand samples, attempting to set its pipe at a point or level which would be proper to produce all of the oil capable of being produced by the well, with a minimum of gas, and by casing off the "gassy" formations; that the well referred to was the John Herd Well No. 1; that the

gas flow of that well increased to sixty million cubic feet, and nevertheless there was maintained a gas-oil ratio therein of not to exceed 900 cubic feet of gas in the production of a barrel of oil; so that in an identical case a well of that tremendous capacity, if properly handled and the procedure be followed which has been here outlined, a proper [fol. 442] gas-oil ratio of not to exceed 900 or 1,000 cubic feet per barrel can be maintained;

That in the opinion of the witness, 2,000 cubic feet per barrel would be a proper gas-oil ratio for wells in the Wilcox sand at Oklahoma City, but that there are wells in that field which could not be brought to any such gas-oil ratio, regardless of where the casing might be set; that the so-called Johnson sand would probably be the most difficult in which to establish a proper gas-oil ratio, being more prolific in gas proportion than are the other producing areas.

Cross-examination.

By Mr. German, of counsel for defendants:

That the Corporation Commission has never fixed any gas-oil ratio for the Oklahoma City field; that there is a tremendous advantage in having a proper gas-oil ratio in that the gas in all oil-producing formation, particularly that gas that is dissolved in the oil, is of much importance and value to the oil producers, primarily because of the inherent pressure of the gas within itself dissolved in the oil as an agency to move the oil horizontally through the oil-producing formation to the well-bore; and of lesser importance, as an element of efficiency or agency in producing oil which would otherwise have to be produced artificially, that is, by gas-lift, by lifting the oil or blowing it to the surface; but of the two, the much more important is the conservation of the gas in the formation as the motive element to move the oil through the formation to the well-bore.

Redirect examination:

That gas-oil ratio is important regardless of how the well is operated and becomes of more importance in that by holding the gas back you thereby conserve the energy of the gas and take full advantage of its use; that low gas-oil ratio is one of the most important things in producing oil regard-

less of whether you are producing under proration or otherwise;

[fol. 443] That Mr. German appearing as Counsel for the Defendants, is the General Attorney of the Company of which the witness is Vice-President.

Recross-examination:

That the Skelly Oil Company has twenty wells in the Oklahoma City field, some in the Wilcox, some in the Kinter, some in the School Land; and some in combinations of two of said sands.

Witness excused.

Ray M. Collins, thereupon called as a witness in behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he has lived in Tulsa, Oklahoma, since 1907, and that prior to his appointment as Umpire had been a contractor and oil producer, President of the Echo Oil Company, and interested in the Cortez and other companies; was first appointed Umpire in October, 1926, being first approached in that connection by E. B. Reeser and Dan Kelsey; attended a meeting of the producers of the Greater Seminole area in connection therewith in the Mid-continent Oil & Gas Association headquarters at Tulsa, and when asked as to who was present the first time they ever talked with you about acting as Umpire, objection was made by Mr. German of Counsel for the Defendants, as incompetent, irrelevant and immaterial; that thereupon the following discussion was had:

"Cotteral, J.: I don't know what the object of the question is.

Mr. Glasser: We are going to try to show the background * * * that operates * * * proration outside the Corporation Commission.

Cotteral, J.: Why don't you ask it directly?

Mr. Glasser: I couldn't ask the question in that fashion. I started to develop the subject as best I can.

[fol. 444] Cotteral, J.: Overruled.

Mr. German: Exception.

Cotteral, J.: I suppose the point you are making is that he represents some oil companies and is appointed by the Commission. Is that it?

Mr. Glasser: It is a little more broad than that.

Cotteral, J.: There is no dispute about it is there?

Mr. German: Not at all. In 1926 there was proration by agreement in the Seminole field; in 1927 proration by orders of the Corporation Commission, and it has been that way ever since except for some small intervening periods, and beginning in 1927 he was appointed by the Corporation Commission as Umpire.

Mr. Glasser: Is counsel testifying?

Cotteral, J.: He is making an admission.

Mr. McKeever: There is a purpose in making that admission. * * * We would like to develop just exactly what happened."

That the witness was employed as Umpire at a salary of $24,000.00 per year, and was allowed in addition thereto the witness' expense account and the expenses of those who work under the direction of the Umpire's office; that until February, 1927, that expense account was filed with the Barnsdall Oil Company; that in December, 1926, pipe lines were completed into the Seminole field, and the demand and supply were practically equal and the witness withdrew as Umpire; that in February, 1927, was asked by a committee representing the Seminole operators, of which Howard Cole was chairman, to go over the field and make a survey and to make recommendations, in which engagement the witness drew a salary for about 30 to 45 days and made recommendations which were turned down; and if the witness is not mistaken, was paid for the service by the Pure Oil Company, which was reimbursed by the other operators, "the same as the Barnsdall Company did in 1926"; that the Pure [fol. 445] Oil Company is one of the largest oil-producing and refining companies in the United States, a very substantial company; that Howard Cole is connected with that company;

That in response to inquiry concerning the membership of the committee of which Howard Cole was chairman, the witness made the following respective answers:

"Q. You are not now able to remember who the other gentlemen of the Committee were?

A. Mr. George Moody of the Mid-continent. Mr. Bob McArthur of the Barnsdall, and I believe Mr. Connery of the Carter, I think Mr. Pringle of the Tide-Water, I am not sure. We had so many committees down there the last four years I can't remember.

Q. Mr. Moody representing the Mid-continent Company, were they substantial producers in the Seminole area?

A. Yes, sir.

Q. Do you know whether they have any acreage in the Oklahoma City field or not?

A. They have not.

Q. Mr. McArthur of the Barnsdall Company. They are substantial producers in the Seminole, are they?

A. Yes, sir.

Q. Do they have any acreage in the Oklahoma City field?

A. They have not.

Q. The Carter Oil Company is a very substantial concern?

A. Yes, sir.

Q. Subsidiary of the Standard of New Jersey?

A. Correct.

Q. And they have production in Seminole?

A. Yes.

Q. Do they have any in Oklahoma City?

A. Not that I know of.

Q. The Tide-Water is another very substantial company [fol. 446] is it not?

A. Yes, sir.

Q. In New Jersey at Bayonne?

A. Yes, sir.

Q. Do they have any production in the Oklahoma City field?

A. Not that I know of.

Q. So that not a single member of that committee represented any ownership that is now in the Oklahoma City field. Is that correct?

A. That is correct.

Mr. German: The Oklahoma City field wasn't in at that time. It hadn't been opened up; had not been discovered.

Mr. Glasser: Perhaps you didn't get the import of the question. Let me repeat it.

Mr. German: I don't object to counsel developing this evidence as far as the court is concerned, but it is absolutely a waste of time in my judgment. It is immaterial how they established this proration back there, whether it was a voluntary agreement prior to the time the Corporation Commission began to enforce it in this state in November, 1927, or October, whatever the time was. It is immaterial to any issue in this case."

That the committee referred to has not functioned for possibly three years, and when in existence, operated under the name of the Seminole Proration Committee; that whatever the committee did was by agreement; that in the best recollection of the witness, the operators in the Seminole field first appealed to the Corporation Commission about the first of August, 1927; that the committee then was composed of Mr. McArthur, who has always functioned, Mr. Connery of the Carter, Mr. Nicholas, at that time of the Texas Company, and Mr. Pringle of the Tidewater, and that the other member, in the best recollection of the witness, was Mr. Cole of the Pure Oil Company, so that the only change in the committee in the meantime, was in the membership of Mr. Nicholas of the Texas Company; that there had not been any development in the Oklahoma City field [fol. 447] at the time the committee first went to the Corporation Commission; that when the committee went to the Corporation Commission it petitioned that the Seminole pool be prorated to the outlet; when asked whether the Committee then organized into a permanent organization the witness stated that the producers in each one of the areas such as the Bow Legs Pool, which is one pool, and then the Earlsboro pool, and the Seminole pool, appointed what was considered as an Operators' Committee who were to work with the Umpire and to help out in every case; that the witness was at the time named as Umpire "by this Committee"; the functions and duties of the several operators' committees were limited to the pools which they respectively represented and for which they were appointed by the operators; no other part of the state was at that time involved in that arrangement;

That the witness was requested to advise the court of the percentage of the Seminole area owned by the companies represented by membership on the committee referred to, and stated that he had a list showing companies not owning pipe lines or refineries and having no outlet for their production except through the pipe lines belonging to other companies, a second list showing the companies having pipe lines and refineries sufficient to handle their own production, and a third list showing companies having production, pipe lines and refineries, but production so located that they have to depend to a certain extent on other lines to handle their oil; that the lists so produced by the witness were marked as Plaintiff's Exhibit No. 14, and having been so identified, were without objection offered in evidence as part of the witness's testimony on direct examination.

That the lists so furnished were accurate and prepared under the supervision of the witness; that while the duties of the Umpire extend over the Oklahoma City pool, [fol. 448] it has been handled by Otto Bradford, who reported to the Corporation Commission; that the witness has more or less accurate general information with reference to the Oklahoma City field; that each pool has a committee of its own, a list of these committees to be found in the Orders of the Corporation Commission; that there is a general committee that supervises the whole arrangement so far as the Mid-Continent Oil and Gas Association is concerned, called an Advisory Committee; that Mr. Sidwell of the Prairie Oil & Gas Company, Mr. Filley of the Texas Company, Mr. Nicholas of the Continental Oil Company of Ponca City, Oklahoma, Mr. Blue of the Indian Territory Illuminating Oil & Gas Company, Mr. Fell representing the operators in southern Oklahoma, Mr. Young of the Carter Oil Company, and Mr. Richards of the Pure Oil Company, the Chairman of the committee, constitute the membership of the committee referred to; that this Committee functions as a fact-finding and advisory committee, finding the facts showing the potential production and the demand for crude oil in the State of Oklahoma, and these findings are presented to the Committee and they make recommendations to the operators in the pools, "over in the Seminole or other parts of the state"; that

the Committee gets most of its information upon which it makes its recommendations from the witness and Mr. Mapes, who is the statistician for the Mid-Continent Oil & Gas Association;

That the Prairie Oil & Gas Company's production in the Oklahoma City field is rather small; that the Texas Company does not have any production in the Oklahoma City field; and that the Continental Oil Company has production in the Oklahoma City field;

That at this juncture the witness recalled that Mr. Davis of the Phillips Petroleum Company of Bartlesville, was also a member of the Advisory Committee; that the Indian Territory Illuminating Oil & Gas Company is the principal owner in the Oklahoma City field in area and in number of wells;

[fol. 449] That the witness did not know how these gentlemen made their presence and membership on the Committee known; and is not familiar with how they receive their appointments; that while he worked with the Committee, he had been employed, quite a long while ago, by Mr. Reeser of the Barnsdall Oil Company, although Mr. Reeser was not a member of the Committee; that "the Seminole producers asked Mr. Reeser to get in touch with me and see if I would get in touch with the producers in Seminole"; that when the witness's services were employed for use by the Corporation Commission, the last time he believes, he was again approached by Mr. Reeser; that the witness has been paid since August 5, 1927, by the Carter Oil Company, and has never received any compensation from the State of Oklahoma; that Mr. Young, a member of the Advisory Committee, is President of the Carter Oil Company, which does not have any producing property in the Oklahoma City field; that the Carter Oil Company does not have a pipe line into the Oklahoma City field, but the Oklahoma Pipe Line Company does have; the Oklahoma Pipe Line Company is not under the control of the Carter Oil Company, but the Standard Oil Company of New Jersey owns and controls both the Carter Oil Company and the Oklahoma Pipe Line Company;

That since August 5, 1927, the witness has filed his expense account with the Carter Oil Company and every check he has received since then was issued by that Com-

pany; the witness stopped as Umpire on three different occasions during that time, but went back each time, and he thinks Mr. Sidwell asked him the last time to resume so acting, and it was either Mr. Reeser or Mr. Cole who did so on the other two occasions;

That the Corporation Commission has never issued to the witness any kind of certificate or paper evidencing his appointment as Umpire; that the Order of the Corporation Commission designating the witness as Umpire was upon [fol. 450] the approval of the former Governor of the State of Oklahoma, which has not been confirmed by the present Governor;

That the witness never applied to be appointed Umpire but believes the application for his appointment was in the petition to the Corporation Commission;

That on September 29, 1929, "the last time we started proration in the Greater Seminole, also Oklahoma City", * * * Mr. Reeser made the application to the Commission also requesting me to act as Umpire for the State";

That the witness has never taken an oath of office to act as the official Umpire of the Corporation Commission, as evidenced by the following question by Judge Kennamer, with the answer of the witness thereto:

By Kennamer, J.:

"Q. Have you ever gone before the Corporation Commission or any officer authorized to administer oaths and taken an oath of office as an officer of the state to act as official umpire of the Corporation Commission? You ought to know whether you have done that or not?

A. No, sir, I have not."

That proration was put into effect in the Oklahoma City field on the 28th day of October, 1929; that the Barnsdall Company of which Mr. Reeser is President, does not own any acreage in the Oklahoma City field;

That Otto Bradford was first appointed Umpire of the Oklahoma City pool by the operators in that pool and then at the time the operators of that pool requested that the pool be put on proration, Mr. Bradford was appointed by the Corporation Commission, and the witness made the recommendation at that time, that he be placed in charge

of the field; that Bradford had been engaged in the leasing business prior to that time and lived at Ardmore;

That the operators in the Oklahoma City field to whom the witness refers were the operators who at that time had production in said field, among them being Indian Terri- [fol. 451] tory Illuminating Oil Company, Wirt Franklin, the Sinclair Oil & Gas Company, the Coline Oil Company, T. B. Slick, and Mr. Maybe, an independent operator; those operators suggested Mr. Bradford's name to the witness; he was working for them as Umpire or Referee at the time proration was put in effect in that field; the witness does not know what salary Bradford gets; that the witness had a complete list for the year 1930, of the contributors to the fund which the Carter Oil Company disburses on the Umpire's expense account and salary, of the Umpire, Ray Collins, and the witness produces a paper which is marked as Plaintiff's Exhibit No. 15, and offered in evidence as a part of the direct testimony of this witness without objection; that the Exhibit shows the gross number of barrels of oil produced from November 1, 1929, to January 1, 1931, in the Greater Seminole area, with the average percentage of the total amount produced in the prorated area and the third column sets forth the amount paid by each company; that the producers paid the salary and expenses of the witness based on their part of the oil produced in the Greater Seminole area; the total expense for the period mentioned was $95,181.39; that the same information for the period of time from January 1, 1931, until June 1, 1931, would be available from Mr. Chesebro's books; that the contributors to this fund are limited to the Greater Seminole area, in other words, the entire cost of the proration program over the State (outside of the Oklahoma City area) is charged against the operators in the Seminole field alone;

That Otto Bradford's expenses and salary are paid by producers in the Oklahoma City field, and the witness believes that the Oklahoma City Operators' Committee has supervision of the disbursement of the money raised to pay said expenses and salary; the witness's salary is a state-wide salary, the entire proration of the Class-A wells, which takes in the wells in the state having a margin of twenty barrels (that is, the wells outside of the Seminole [fol. 452] area and the Oklahoma City field), amounts to

about 12,000 barrels, and it would be pretty nearly impossible to divide that among 200 or 300 operators, so that the total expense outside of Oklahoma City is paid by the Seminole operators, and Oklahoma City pays Bradford;

That actual gauges under the Proration Orders were first taken in the East Earlsboro, a flush pool in the Seminole area, commencing on the 29th of September, 1929; and taken every seven days thereafter, during the month of October; that the witness was personally present at the taking of a great many of such gauges, but that a majority were witnessed by representatives of other lease owners in that field;

That in October of 1929, a new Order was issued, which started prorating the entire Greater Seminole area, of which East Earlsboro forms a part; that in 1929 the producers in that field gave the witness their pipe line runs and their production figures for the month of September; that the witness thereupon had the daily average of the actual production taken for that month to arrive at the potential for each lease, and from the first of November, 1929, until April, 1930, declined each lease 3% per month; that the potential of such lease was arrived at by such decline method; that the decline method was so employed after consultation with the Engineers of the various companies interested; that the Umpire's office also had decline curves on that field since 1927, the source thereof not being indicated by the witness; that the 3% decline so applied

"was upon the best information available and it saved opening up the wells and taking new gauges and giving everyone the opportunity of believing that the other man was cheating";

That in April, 1930, a 15-day open flow gauge was taken in the Greater Seminole area, to check up on the decline [fol. 453] curves; that the 3% applied in the decline curves, was within the information the Engineers gave and the past history of the field; that the open flow production for the 15-day gauge showed a slight increase over the decline curve figures, and that thereafter, until March, 1931, the potentials were carried as shown by the 15-day open flow gauge; that in the taking of the 15-day gauge referred to, the wells were allowed to produce for 15 days at open flow capacity, day and night, and a gauge was then taken;

and on March 15, 1931, a 10-day gauge on all of the pools in the Seminole area, with the exception of the ones that were flush, was again taken to check the potential for the purpose of de ermining whether such decline curves were satisfactory, and it showed an

"increase of about 7000 barrels over what we were carrying it previous to the gauge. Since that date we have been using the 3% decline curve on leases in Class-B of the Greater Seminole area";

That other actual gauges were taken in the Chandler pool, and in the Wewoka Townsite pool; that in Class-A wells, as defined in the Corporation Commission's Orders, the actual production records for the months of July and August of 1930, were used as a potential, and have been declined 1½% a month since, that being about the rate of decline of the old fields;

That the Garber field was declared exempt from proration by the Corporation Commission after conducting a hearing on the application of the producers therein and the Garber Refining Company, on the ground that the Garber Refining Company was the only one serving the field, and that it had a demand for the entire production therein, and would take it ratably; that gauges have not been taken in the Burbank pool (some 75 miles or more north of Seminole area); and in Tatums the potential of such wells as are brought in, are taken when completed, that this is a small field in the southern part of the State, producing about 6,000 barrels per day, with a potential of between 40,000 and 45,000 barrels per day; that the old original Tatums pool is not making [fol. 454] an average of 20 barrels per well;

That proration is conducted in the interest of the producers and the Corporation Commission, and the witness supposed the public's interest therein was "in the way of conservation";

That the witness remembered this question having been propounded to him when testifying before the Corporation Commission, and that he there said that

"he was not interested, as far as the public was concerned";

That the witness now states that his meaning in the answer which he gave before the Corporation Commission, was that he

"was not interested as far as the public was concerned, when it came to the mechanics of proration";

that Judge Phillips requested the witness to

"make a list, and furnish it in the morning, of the fields in which there is no proration, and the amount of oil those fields produce";

that the witness stated that he would not "be able to get that unless I went to the office," and thereupon Judge Phillips advised the witness to "telephone to the office and have it sent up," and the witness was then requested by Counsel to have the fields "indicated if you can";

That under the practice employed in the Seminole area operators are notified of the day on which the potentials are to be taken; these notices go out to all the operators in the entire pool giving the date the potentials are to be taken and how they are to be taken; the pools are classified, and [fol. 455] whether all of the operators in the entire Seminole area are notified or merely the operators in a particular pool therein, depends on conditions; that there are very few operators in the Wewoka town-site pool and they are notified individually and as a pool, but the operators in the other pools (of the Greater Seminole area) are not notified that a gauge is to be taken in the Wewoka town-site pool, and in the case of wells in the Class-B pools in the Greater Seminole area, all the operators in said pools are notified that a decline curve will be used for the month of June; that they are also notified by letter at the same time that the Konawa pool will take a 5% decline for the month of June; the witness states that he has already gone over the fact that an actual gauge was taken for 30 days in September and then states that the gauge that was taken at that time had been used as the basis for the decline curve since then, and that notice was given to the operators that said curve would be continued and extended unless there was some reason to do otherwise; that an actual physical gauge is taken twice each year and the last one was taken in March, 1931; that the operators in the Oklahoma City field are not given any notice of the taking of any gauge in the Greater Seminole area, and conversely, operators in the Seminole area are not given any notice of the taking of any potential in the Oklahoma City field; that the witness does not assign

market demand to the respective fields but makes the recommendation upon which the Corporation Commission assigns the market demand; that he obtains the information which he passes on to the Commission from the marketers who buy oil from those districts; said information does not come from the Advisory Committee; Mr. Mapes and the witness get it from the different purchasing companies and different refiners; that at the last meeting of the Seminole operators in April, 1931, the purchasing companies in the [fol. 456] Seminole area were asked to and did make their nominations as to the amount they would take out of those fields; that some of that information comes from the Prairie Oil & Gas Company, with which Mr. Sidwell is connected; that at the April meeting of the Seminole operators, the witness did get information from Mr. Sidwell personally; that some of said information came from the Oklahoma Pipe Line Company, as evidenced by the following:

"Q. Did you get some of it from Mr. Young of the Carter Company?

A. I believe that came from the pipe line company.

Q. Well, who is at the head of the pipe line company?

A. Tom Moroney, I believe represented them.";

and that some of said information came from The Texas Company through one Mr. McGoltrich, so that the recommendation which the witness takes to the Corporation Commission for the assignment of so-called market demand over the State, is predicated upon data and information which is obtained from these men at the heads of these pipe line companies; that since January 1st, 1931, all of the purchasing companies in the State are subpœnaed by the Corporation Commission to appear before the Corporation Commission and the nominations are there made directly to the Corporation Commission; that the witness made the recommendation upon which market demand in the Seminole area and the balance of the State other than the Oklahoma City pool, was assigned for the month of January, 1931;

That when the witness's attention was directed to Plaintiff's Exhibit No. 11 (being a compilation of potentials under Corporation Commission Order No. 5413, as of January, 1931), he stated that Seminole and the balance of the State were correct as there indicated, because they are

practically actual production, while the potential figures for the Oklahoma City field is "just an exaggeration"; that the witness stated that Plaintiff's percentage upon Exhibit [fol. 457] No. 11 was not correct; that he made the recommendation for the assignment of Seminole's allowable production and the balance of the State as shown by the Exhibit; that the witness figured the balance of the State at actual production and not upon an estimate and that the Greater Seminole allowable was actual production and that if an actual gauge could be taken of the Oklahoma City field in the same manner as taken in Seminole the potential would show about 600,000 barrels; thereupon, the witness stated:

"Therefore, instead of having only 1.58%, you will find that you are having your share of the outlet of the state";

that the potential of the Oklahoma City field is nothing more

"than a measuring stick to allow each producer his ratable taking out of the field";

that if the Oklahoma City field were to be put upon its maximum open flow that at the end of thirty days it would undoubtedly do around 600,000 barrels; that

"based upon estimates of Champlin's and other geologists",

in the opinion of the witness, the Oklahoma City pool would not ultimately produce more than 250,000,000 barrels, of which 60,000,000 have been recovered, leaving 190,000,000 to be produced, and "it is considered" that if the field were to be opened wide, it would produce 50% of this amount the first year, so that if you would apply that curve backwards it would show that the total production for the first thirty days would average about 1,000,000 barrels per day, and for an entire year would average about 287,000 barrels per day; that such calculations are estimates upon the part of the witness, based upon conclusions of Geologists; that if the Oklahoma City field be allowed to produce upon its maximum open flow for thirty days, that it would then make about 645,000 barrels per day as against approximately 800,000 in the balance of the State;

That when asked as to whether the uniform application of the law would require that the percentage allowed in the Oklahoma City field should be therefore raised to a point [fol. 458] where it would give the Oklahoma City field its share of the oil (production) as against that same figure in the balance of the State, the witness replied "no, sir"; and that the application of a percentage which returns a greater "proportion" of production of oil to Seminole and the balance of the State, than to Oklahoma City, is not an arbitrary discrimination against the Oklahoma City field, for the reason, in the opinion of the witness, that, regardless of what the Oklahoma City field might actually do, it should never be opened up to more than 250,000 barrels a day if you are going to have your greatest recovery; that the witness was thereupon asked if the application of a percentage that returned to Oklahoma City a lesser volume of oil against its possible actual production than is allowed in actual production to other parts of the State, constituted a discrimination against the Oklahoma City field, to which Mr. German, of Counsel for the Defendants, objected as argumentative, followed by the statement that

"Counsel well knows the allowables for all these fields are predicated upon a market demand for oil from those fields. This question is argumentative."

Cotteral, J.: The question covers too many phases, and calls for an opinion of the witness without a full statement of all the facts.

Phillips, J.: And involves the word "discriminatory".

Cotteral, J.: Objection sustained";

That when the witness was asked if the principal purchasing agents of the Seminole and Oklahoma City fields were represented on the Advisory Committee, replied that "You have the list there". Inquiry was then made as to the following situations: The Oklahoma Pipe Line Company, a Standard of New Jersey subsidiary, a purchaser in both fields; The Indian Territory Illuminating Oil & Gas Company, producing oil in both fields; The Texas Company, [fol. 459] which "buys oil in both fields but have only one pipe line into the Seminole";

The Prairie Oil & Gas Company buying in both fields, when buying; The Phillips Petroleum Corporation pro-

ducing in both fields; resulting in the conclusion that the companies represented through executive officers as members of the Advisory Committee, are either buying in, producing crude oil, or own pipe lines into both fields; that in considering the market demand, the witness takes into consideration the railroad transportation facilities as far as he can in the respective fields; that in this connection, the Oklahoma City field is handled entirely by the Corporation Commission.

Cross-examination.

By Mr. German, of counsel for defendants:

That the Indian Territory Illuminating Oil & Gas Company has production in Seminole and Oklahoma City areas with the largest production potentially in the Oklahoma City field; that the Phillips Petroleum Company likewise has its largest potential production in the Oklahoma City pool; that prior to the time when the Corporation Commission in the early part of 1931 began to call in by subpœna the purchasers of crude oil, the witness and Mr. Mapes

"ascertained how much the different buyers would take from different pools, and after about the first of 1931, the Commission itself has been having the purchasing concerns testify before it as to the amount they expected to take during the next month, or quarter, as the case might be";

that in the event of changes in the current or market demand during any given month or quarter, such change was taken care of by the orders of the Corporation Commission; that the witness has never fixed the amount of oil to be allowed to be produced in any field, and that when fixed by the Corporation Commission was predicated upon the demand as ascertained; that the witness has made an effort to obtain a larger amount of current outlet for the Oklahoma City field than it has had from time to time and that others have done likewise; that the State-wide Proration Committee has attempted from time to time to induce the [fol. 460] purchasing companies to buy more crude oil from the Oklahoma City field, and that they did give their promise that they would do so; that when the witness referred to the so-called Advisory Committee, he was re-

ferring to the State-wide Proration Committee; that he was not sure as to whether he had given a correct list of the names of the Committee, but was sure that Alvin Richards is the Chairman; that the Stanolind Company is the largest purchaser of crude oil in Oklahoma, but does not have a representative on the Advisory Committee; that the members of that Committee are "oil producers personally, or affiliated with companies that are oil producers", rather than in the sense of the members being oil producers themselves, and that the members of the Committee have not been appointed by reason of the fact that the company with which such member is connected is a crude oil purchasing company.

Redirect examination:

That the Stanolind Company is owned by the Standard of Indiana; that when the witness tried to get an increase of market for Oklahoma City, the price was never considered; that an effort to get a market below the posted price was never attempted because it would be practically impossible to find a seller; that the witness has never considered price in any way in attempting to get a market, but that he has never tried to get a market below market price; that the witness denied that he had been interested in maintaining the posted price, and again stated that price had never entered into his considerations in any way.

Hereupon, Court adjourned until 9:30 o'clock A. M. of June 30th, 1931, at which time all parties being present, Court reconvened, and further proceedings had in the above entitled cause as follows:

RAY COLLINS, recalled, further testified in substance as follows:

Redirect examination.

By Mr. Glasser, of counsel for plaintiff:

[fol. 461] That the witness has obtained a list of the pipe lines serving the Greater Seminole area, together with their size and capacity, and submits a paper which is marked as Plaintiff's Exhibit No. 16, which Exhibit as so identified is offered in evidence as part of the testimony of this witness, without objection; that the witness thereupon produced a

paper which is marked Plaintiff's Exhibit No. 17, which the witness identifies as list of the Oklahoma City pipe lines and loading racks, as filed with the Corporation Commission, and Plaintiff thereupon offered the Exhibit, which has been so identified as No. 17, as part of the testimony of this witness, without objection; that the witness thereupon produced a paper which is marked Plaintiff's Exhibit No. 18, and identifies same as a list of the companies owning production in the Oklahoma City pool, showing the number of wells so owned, with the potential production thereof, as of June 1, 1931, which Exhibit as so identified, Plaintiff offers in evidence as part of the testimony of this witness, without objection;

That the fields in which proration is not in effect, are Garber, Cement and Deer Creek, the total production of the entire areas being under 10,000 barrels per day; that the 20-barrel maximum applies to all pools, and any well in any pool which comes in at a greater production than 20 barrels per day, is immediately put under proration, and any well not making 20 barrels is not within the arrangement; that it was thereupon agreed by the Court, speaking through Judge Phillips, that the witness would be permitted to subsequently furnish the oil runs from the Oklahoma City and Seminole fields, with the account for whom the same were taken, and that when such document, when so prepared for the Seminole area, shall be identified as Plaintiff's Exhibit No. 19, and for the Oklahoma City area as Plaintiff's Exhibit No. 20, to be filed with the Court Clerk by the witness, and as so filed, offered in evidence [fol. 462] without objection upon the part of the Defendants; that said documents were later so furnished by the witness and filed with the Clerk, marked as so indicated and made a part of the Exhibits in this cause; that in the hearing before the Corporation Commission on the 4th day of March, 1931, the witness admits that while there under oath, in response to the following questions, made the following answers:

Question by Mr. Pierson:

"Q. Mr. Collins, at the present time, aren't the great majority of the refiners of the United States running from what we call hand to mouth from oil received daily?

Q. With no storage in the business at all?
A. I think that is true; yes, sir.
Q. The only storage now of any consequence belongs to the big companies which are drawing on that storage a little every day?
A. I think that is true."

That the witness does not now know whether such was true, but from common talk at the time that he gave such testimony so thought, and intended the answers to be true answers at that time;

That the potentials in the Oklahoma City field which are determined as to the specific wells are approved by the Commission as a whole without any order of approval as to specific wells; that it is also true that the potentials in the Greater Seminole area are approved as a whole by the Commission; that under the procedure the Umpire's office calculates a total of the potential and that figure is submitted to the Corporation Commission and by them approved as submitted; that there has never been a single change made by the Corporation Commission in any potential figured since the witness has been acting as Umpire in so far as the witness knows; that the witness does not have personal knowledge as to whether such plan of approval has been so followed in the Oklahoma City field;

That the witness does not know whether any evidence has ever been taken or order entered by the Corporation Commission for the determination of the boundaries of the [fol. 463] Oklahoma City field, and that the witness has attended all of the hearings of the Corporation Commission;

That the boundaries of the Greater Seminole area are indicated upon maps showing the boundaries of each group in that area attached to the petitions upon which the Corporation Commission's Orders were entered; that the Corporation Commission's Orders do not make specific findings of boundaries in the Greater Seminole area and the Oklahoma City areas except by reference to the maps.

Recross-examination:

That the Seminole pool came in in July, 1926, and the Oklahoma City pool on December 4, 1928; that the Seminole pool was developed and under proration before the Oklahoma City pool was discovered; that the major trunk pipe

lines ran through the Cushing pool and another just a short distance from the Greater Seminole area before the discovery thereof, and "they were close to the Seminole pool, some of them run to the east and some to the west" of the Seminole area through the State of Oklahoma before the discovery of that area; that these major pipe lines are the Gulf, the Texas, the Magnolia, the Oklahoma and the Prairie, and that connections were made between those pipe lines and the Seminole pool after the Seminole pool developed; that an established market for Seminole crude existed when the Oklahoma City pool was brought in; that the major pipe lines of the Shell and the Magnolia run through Cushing south, and are not very far from the Oklahoma City pool; the Oklahoma, the Gulf and the Texas run east of the Seminole, and would take considerable pipe line connection into the Oklahoma City pool; that the Gulf and the Texas do not have lines into the Oklahoma City pool; that the Magnolia, the Shell and the Oklahoma are nearer to the Seminole than the Oklahoma City, and connected with the Seminole before the Oklahoma City pool opened up; [fol. 464] that after the Oklahoma City pool opened and became of consequence, the Oklahoma, the Shell and the Magnolia built into the Oklahoma City area; that the Prairie, which appears on Plaintiff's Exhibit No. 17 to have a pipe line into the Oklahoma City field with a capacity of 45,000 to 50,000 barrels, is not now purchasing crude oil anywhere; that the capacity of the pipe lines listed into the Greater Seminole and Oklahoma City areas, appeared to be greater than the amount of oil which is run through those lines, indicating that the demand is less than the capacity of the lines; that there are many instances, and such has always been the case, in which lateral lines which lead into these trunk lines cannot receive the full capacity of the lateral lines that lead to the fields; that

"if they charged the lateral line leading into the field to its capacity the trunk line could not take the oil because it is 'bottled up', so to speak, by oil that has been taken from other sources and is already contained in the trunk line";

that the boundaries of these oil pools are well known so far as they are developed and that there isn't any difficulty in anybody knowing the extent of the boundaries; that such information may be obtained by simply going out and tak-

ing a look at where the producing wells are; that sometimes they drill a well beyond the proven area and it turns out to be a dry hole, which of course limits the field at that point; that oil pools are generally known by some name, which has been the practice in the industry throughout its history; that the Corporation Commission Orders follow this practice in designating pools; that on the map (attached to the petitions for the orders) a red line is drawn marking out each pool and the name of the pool is written within the line;

That the potentials that are shown on Plaintiff's Exhibit No. 18, being a statement of the May, 1931, potentials and allowed production of the producers, in the Oklahoma City [fol. 465] field, are the potentials before they are divided by 3; the Commission's Order No. 5369, dated October 28, 1930, is now referred to as "the base order" and since then the Commission has modified that Order some from time to time, as shown by subsequently entered Orders; and that in Order No. 5413 of December 30, 1930, the Commission modified Order No. 5369 to the extent of changes in potentials and allowables and perhaps in some other minor respects, and in the Commission's findings and orders in those and subsequent Orders where there was a change in the findings as to potentials and in the amount of the allowable production,

"the amount of the allowable production in each pool corresponded to the current demand for crude from such pool; and the same thing is true in the case of each of the orders".

Redirect examination:

That the peak of production in the Greater Seminole area occurred after the discovery of the Oklahoma City field; that the witness accounts for his office adopting one method for taking potentials in the Oklahoma City field and an entirely different method of taking like potentials

"in those fields that reached their peak of production after the Oklahoma City field came in",

by reason of the fact that

"the operators in the Oklahoma City pool agreed to the 'time basis' in this pool, while the operators in the Greater Seminole area elected to take theirs by gauges";

that the witness does not believe the Champlin Company ever agreed to either arrangement; and that the Champlin Company did not come into the Oklahoma City field until a long time after the operators there agreed upon the time basis of proration; that the East Texas field came in in the fall of 1930; that the opening of any underground reserve will naturally have the effect of lowering the posted price of crude oil, and

[fol. 466] "it lowers the price any time the underground reserve is increased and that is what took place when they opened up East Texas";

and had the effect of lowering the posted price in Oklahoma; that the East Texas field is a field of tremendous magnitude and very prolific production at a much less depth than Oklahoma City, with a correspondingly lower lifting and drilling cost, so that the production in the East Texas pool, in view of the factors just enumerated, will likewise tend to reduce price, posted or otherwise, in all of the oil producing areas in the United States; that any time a field comes in and shows a tremendous reserve, such fact has an effect upon the market regardless of whether the field is controlled or not; and the witness stated that in his opinion it is the enormous reservoir that has been shown in the East Texas field that has lowered the price of crude oil and that price will be lowered as a result of the factors which the witness has taken into consideration regardless of anything else, and that such result is but the working of the law of supply and demand; that the posted price in Oklahoma at the time the East Texas field came in was $1.07 per barrel, and that at the time the witness was testifying it wac 36¢ for Oklahoma City oil; that the current price of East Texas field oil at this time is 20¢ per barrel, and that the witness

"does not know how that compares with oil produced in Venezuela and imported at bare transportation costs into the United States".

Recross-examination:

That at the time the Seminole field was first prorated by orders of the Commission in 1927, the price of crude oil

in Oklahoma was better than $2.00; that the price of crude oil has constantly declined since those first Proration Orders within the State, until it is down to 35¢; that there was one increase in price

"which was in May of 1928 when proration was lifted [fol. 467] when the demand and supply were equal",

since then it has gone down;

"afterwards the available supply exceeded the market demand and proration was again instituted and the price went down and it has been going down ever since";

the witness believes that the price was down to $1.07 when the East Texas pool was discovered and had been so for quite a while before that; it went down to 67¢ last March and then down to 35¢; that "time proration" was in effect in the Oklahoma City field until the first of January, 1931, having been instituted in September or October, 1929; that plaintiff did not enter the Oklahoma City field until after time proration was in effect; that the percentage plan went into effect in said field the first of the year 1931; that when "time proration" was agreed upon by the operators in 1929, the potentials in the field were quite high and the operators submitted to the Corporation Commission the question as to whether the time method of operating the pool should be enforced, and the Commission approved it; that the operators presented before the Commission the question as to whether there should be a change from the time basis to the percentage basis, at a hearing, and each side presented their facts to the Commission, and the Commission decided in favor of the percentage plan, and so ordered.

Witness excused.

[fol. 468] A. B. CHESEBRO, was thereupon called as a witness on behalf of the Plaintiff, —, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser of counsel for plaintiff:

That he lives in Tulsa, Oklahoma; employed by the Carter Oil Company in the capacity of Assistant Treasurer

and has immediate custody of the records with reference to the disbursement of the Proration Expense Fund; that the witness prepared the document which has been offered as Plaintiff's Exhibit No. 15; that he does not have a similar list of the contributors for the period from January 1, to June 1, of this year, but did have in his possession upon the witness stand the books and records, and from such books and records testified that there were a few additional contributors not shown on the Exhibit, but that generally speaking the contributors are practically the same; that the witness was then questioned regarding a letter written to Ray Collins by J. C. Denton under date of February 28, 1931, attached to a letter from Burford, Miley, Hoffman & Burford, of February 4th, 1931, addressed to Ray Collins; that to the best of the knowledge of the witness he never saw the original of either of these letters; that the signature on the first paper is the signature of his secretary, and that the letter was written in his office; that it looks as if he had dictated the letter, but to the best of his knowledge he did not remember having done so; that thereupon the documents referred to are marked Plaintiff's Exhibit No. 21, which is then offered in evidence, to which offer the Defendants object as incompetent, irrelevant and immaterial, and thereupon the Court indicating that the objection would be overruled, a discussion occurred as to the signature of J. C. Denton upon the original of the letter of which a photostat was included in the Exhibit as so marked, and Counsel for the Defendants thereupon admit that Mr. Denton signed the original letter, of which the photostat was a copy; that the Court thereupon overruled the objection, and the Exhibit in its entirety was admitted in evidence.

No cross-examination.
Witness excused.

[fol. 469] L. McLennon, thereupon called as a witness on behalf of the Plaintiff, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser of counsel for plaintiff:

That he lives in Oklahoma City, employed by the Oklahoma City Producers Association, an organization of oil

companies operating in the Oklahoma City field; came in contact with the organization through a Committee that is now composed of J. S. Anderson, of the Anderson-Prichard Company; R. M. Williams, of the Indian Territory Illuminating Oil & Gas Company; A. A. Seligson, of the Slick-Urshel interests; A. L. Briggs, of the Coline Oil Corporation; and Wirt Franklin; that the witness has prepared a list of contributors to the expense fund necessary to maintain the organization which is made available and marked as Plaintiff's Exhibit No. 22, and thereupon identified by the witness as a list of contributors to the expenses of the Association for the month of May, 1931, and correct and accurate as so prepared in the office of the witness; thereupon the Plaintiff offers and the same is received in evidence as part of the testimony of the witness, over the objection of the Defendants, to which ruling an exception is allowed; that thereupon the witness produces a document which is marked as Plaintiff's Exhibit No. 23, which is identified as a statement of salaries and expenses of the Umpire's office in the Oklahoma City field for the month of May, 1931; that after having been so identified is offered in evidence by the Plaintiff, to which the Defendants object as immaterial, which objection is by the Court overruled, and exception granted to the Defendants; that the same arrangement has been continued through the months prior to the month of May, 1931, with some variations, but generally in practically the same budget and the same contributions; that there are 20 producers in the Oklahoma City field that solely contribute to the fund, and about 30 that do not; that the Committee which the witness has identified has func-
[fol. 470] tioned as such since March, 1931; that prior to that date the Committee that so functioned was composed of Mr. Franklin, Mr. Williams and H. B. Smith of the Sinclair Oil & Gas Company. W. W. Fleming of the Mid-Kansas Oil & Gas Company, and J. S. Sidwell of the Prairie; that the Association which the witness has identified was organized in January, 1929.

Cross-examination.

By Mr. Miley, of counsel for defendants:

That the Oklahoma City Producers Association is a voluntary association in which every producer in the field

may become a member if he so desires; that some producers in said field have not so elected and are not members of said Association; that the statement of the contributions for the month of May, 1931, (Plaintiff's Exhibit 22) shows a total daily average production of the contributing producers of 125,000 plus barrels, and that represents the greater part, though not all, of the daily average production in the Oklahoma City pool;

"That all of the members, all of the directors of the Operators Committee are either these producers in the Oklahoma City field or are officers or employees of producers therein";

that the expenses thereof being prorated among the voluntary members on the basis of such members daily average production for the month; that the members of the Committee which conducts the affairs of the Association, are elected by the members of the Association; that each member of the Association has a vote on a percentage basis; that the expense at the end of each month is prorated upon daily average production during the past month; that over the objection of the Plaintiff the witness was permitted to state that it is his understanding that the State is without available funds with which to pay for the extra help needed to carry out the proration scheme.

Redirect examination:

[fol. 471] That the Legislature that adjourned some thirty days before, had not appropriated any funds with which to keep the Act in operation; that the by-laws of the organization provided that when a vote be called for by the members, each such member shall be entitled to one vote per $100.00 or fractional part thereof, which the member shall have paid on the basis of the last quarterly payment prior to such vote; that one member may not own more than 25% of the total vote.

Recross-examination:

That about 83% of the production in the Oklahoma City field is represented in membership in the Association by contributions; the Operators' Committee which acts under appointment of the Corporation Commission in conjunc-

tion with the Umpire is not the same as the above mentioned committee elected by the members of the said association; the members of the Operators' Committee appointed by the Corporation Commission may or may not be members of the Association; an opportunity has been afforded to all the producers in said field to become members of the Association, and those who have not become members are small producers, or town-lot producers, in the north end of the field, and they said they were not financially able to come in; that two or three have refused to contribute on account of proration, not being in sympathy with it.

Witness excused.

FRANK COSAN was thereupon called as a witness on behalf of the Plaintiff, —, being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives in Oklahoma City, employed as a Clerk in the Umpire's office in the Oklahoma City field; that his superior officer is Otto Bradford, who is ill and unable to be here; that he had testified before the Corporation Com-
[fol. 472] mission on the previous day as to the potential of the Oklahoma City field, and stated that on the first day of July the potential would be 7,800,000 barrels; that such potential was predicated on the last 4-hour test taken beginning April first, 1931, multiplied by 6, but not divided by 3; that the witness did not know whether such potential was fictitious;

"It is the way the Commission told us to arrive at our potentials";

that the Commission did not tell the witness to testify as he did testify on the day previously; that the witness's exact testimony as to the potential upon the previous day was 7,718,244 barrels; that the following questions were asked and the respective answers thereto given:

"Q. Will you tell us briefly how you reach that calculation and that figure?

A. Each well in the field commencing seven A. M., April first, was ordered to take potential tests, and those tests were taken on a four-hour period. They were witnessed by representatives of various companies; turned into our office, and we computed them by multiplying that test by six.

Q. Were all the adjacent and adjoining wells closed in when these tests were taken?

A. Yes, sir, so far as our knowledge goes because we request it.

Q. If the rules were followed?

A. Yes, sir."

That the witness did not believe that there were any wells in the Oklahoma City field that were being operated upon what is known as an "Estimated Potential", with the possible exception of two or three that are being re-conditioned; that in the past some wells have operated without an actual potential, upon an estimated potential; that the witness does not think it was the practice at all to permit certain operators to take estimated potentials instead of an actual four-hour potential; that anyone that produced on [fol. 473] an estimated potential just so produced, and that the witness knew that this has been done but does not think that any of the companies have been permitted to so operate; that the Champlin Refining Company operated two wells on estimated potentials, and that outside of the Champlin,

"almost every company in the field had done so at various times";

that the witness was then questioned as to who made the estimates when estimated potentials were used, and stated that he imagined Mr. Bradford did so; that the witness was interrupted by Judge Cotteral, addressing to Counsel the following statement: "I don't understand what you are driving at", as the result of which, the following discussion occurred:

"Mr. Glasser: The purpose is to show the rule, which we contend to be a bad one, * * * was not enforced in

certain instances, that estimates were put upon these potentials without any kind of a test, four-hour or otherwise.

Cotteral, J.: Suppose they made a mistake, would that be any ground for enjoining the whole scheme?

Mr. Glasser: We don't quite believe that kind of arrangement could be a mistake. We think that would be something else, especially if we are able to identify the people that were permitted to do that.

Mr. German: You haven't——

Mr. Glasser: We are trying to.

Mr. German: You haven't had the witness explain the occasion for such a thing as that.

Mr. Glasser: You can do that on cross-examination."

That the witness identifies a document marked Plaintiff's Exhibit No. 24, as the "overs and unders" of the Oklahoma City pool at 7:00 o'clock a. m., June 1st, 1931, which document as so identified, was thereupon offered and received in evidence, over the objection and exception of the Defendants;

That the attention of the witness was directed to Phillips Petroleum Damewood Well, carried upon page 10 of said [fol. 474] document at an Est. Pot. of 53,910 barrels; that the witness then testified in substance that said well is not permitted to be operated on said estimated potential; that said well had just been completed and that it has a 65-day shut-down time at the end of which it is permitted to produce 8 hours, and that the Umpire's office takes the eight-hour production and figures from that the estimated potential, but the operator is not allowed to produce on that potential; the estimated potential is computed so as to have a figure as to the maximum production on the well based on the eight-hour test; the eight-hour production is not considered illegal over-production; and thereafter the well is required to take an actual test;

That there are a number of wells indicated upon Plaintiff's Exhibit No. 24, which have not had any potential of any kind taken; that the witness identified Mid-Texas Petroleum Floral Hills No. 1 well as being within such classification; that the estimated potential at which that well was being carried, was entered before the witness got there, the estimated production on said well having been figured from its last production; that it had been illegally overproduced

and had then been shut in for about four months; that such estimate was wholly arbitrary in the office of the Umpire; that there were other instances of like character.

Cross-examination.

By Mr. Miley, of counsel for defendants:

That the column in Plaintiff's Exhibit No. 24, in which estimated potentials are carried, goes to all producers for the purpose of information as to the status of all wells in the field; that where no potential has been taken pursuant to the orders of the Corporation Commission, every well is estimated as to its past record either during an eight-hour test when it first came in, or upon its last production, if it is a well that is illegally overproduced and is shut-in to make up the over-production, and this is for the information of all the operators as to the status of the wells; that [fol. 475] estimated potentials are not potentials upon which the particular well is permitted to produce; that under the orders of the Commission when a well first comes in, it is permitted to flow eight hours "for the purpose of testing," that is what is meant by the eight-hour period; it is then shut down for 65 days, plus its extra time; that a potential is taken at the end of that time in conformity with the rules of the Corporation Commission, after which it is permitted to produce on its potential so taken; that in all cases of estimated potentials the well upon which such estimate is being carried is either serving a 65 day shut in period and has not yet had its legal potential taken or has been overproduced and therefore not permitted to take a potential at the last time potentials were taken; and in some cases by reason of being then reconditioned, worked on, or cleaned out, "and they cannot take their tests"; that by reconditioning is meant drilling a little deeper, or plugging back, or caring for any one of a number of situations that may arise in the drilling of an oil well; that when a well gets out of condition, it is necessary to repair it in some way, and during such period of repair it is impossible to take its potential; that after the well is reconditioned its potential is taken on a four-hour gauge according to the rules of the Commission and the production it has made during the reconditioning process is charged against such well on its allowable based on such four-hour potential;

That the oil produced by any well during its eight-hour test following its completion, is charged against such well when it starts on production, that is, after the 65 day shut down period;

"it is made up so many minutes a day and at the present time 48 minutes a day";

That thereupon, the following questions were addressed to the witness, and the respective answers indicated given:

[fol. 476] By Mr. Glasser:

"Q. Did I understand you to say they were not permitted to take an allowable against these estimated potentials in any instance?

A. No, I didn't say that was an allowable.

Q. What have you got that estimated potential in there for on a given well?

A. If a well is over produced that estimated allowable is not an allowable. It is credited against over production.

Q. Do you mean to say every well that has an estimated potential here is an over produced well?

A. I wouldn't consider a 65 day well an over produced well, no, sir.

Q. Let's get the matter straight. What do you put that estimated potential in here for if it isn't to be used for allowable production?

A. To list every well in the field.

Q. That is the only purpose it is used for?

A. Yes, sir.

Q. It doesn't enter into the calculation of the total potential of the field?

A. No, sir, it does not. It does on the report; you use it.

Q. When you go before the Commission to give testimony as you did yesterday, had you had this report?

A. No, sir.

Q. On which to predicate that testimony?

A. No, sir."

Witness excused.

CHARLES C. CHILDERS, thereupon called as a witness in behalf of the Plaintiff, being first duly sworn, testified in substance as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he is a member of the Corporation Commission of the State of Oklahoma, and has been such member for four years continuously; that he has not signed all of the Prora-
[fol. 477] tion Orders that have been made; that for two and one-half years he did not sign any such Orders—that his reason therefor, was that at that time he "didn't believe in Proration"; thereupon the witness was asked if he had recently signed some of the Orders, and in response stated that he had; and that upon being asked for the reason of his change in opinion, the following objections and rulings thereon were made:

"Mr. German: Object to that as incompetent, irrelevant and immaterial. It seems to me to be immaterial why one of the Commissioners dissented.

Kennamer, J.: What is the purpose of the question?

Mr. Glasser: The purpose is to try to show that we are engaged in a price-fixing instead of conservation enterprise.

Kennamer, J.: Let him answer.

Phillips, J.: Not his opinion. Let him state facts. Whether he believes in proration or not, I am not interested in that.

Mr. Glasser: I am not seeking to offer the witness's opinion.

Phillips, J.: That is all you have offered so far. Let's get down to something material.

By Mr. Glasser:

Q. Mr. Childers, from all the testimony that you have heard as a member of the Corporation Commission, and from all the matters that have come before you as such, I will ask you to state whether the effect of such orders as have been entered by the Corporation Commission were to stabilize or fix prices in the State of Oklahoma rather than conserving natural resources of the State?

Mr. German: Object to that as incompetent, irrelevant and immaterial, and calling for an opinion and conclusion of the witness.

Cotteral, J.: Objection sustained.

Mr. Glasser: Exception.

By Mr. Glasser:

Q. What was the purpose of the orders that have been entered by the Corporation Commission in connection with the proration program?

Mr. German: Object to that as incompetent, irrelevant and immaterial. The purpose appears on the face of the orders. They can't have him impeach them.

[fol. 478] Cotteral, J.: Objection sustained.

Mr. Glasser: Exception."

Witness excused.

G. E. Leverton, thereupon called as a witness on behalf of the Plaintiff, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives at Enid, Oklahoma, employed by the Champlin Refining Company as general auditor; that the witness had made a calculation to determine the products that the Champlin Refining manufacture and market from one barrel of 38 gravity crude oil as produced in the Oklahoma City field; that such calculation as so made by the witness is fully set forth in the affidavit of the witness filed in this cause in support of Plaintiff's application of June 13, 1931; that by reason of objection upon the part of the Defendants to the use of such affidavit, the Plaintiff is, over the objection of the Defendants, permitted by the Court to tender the evidence of the witness; that based on 1930 marketing and 1931 manufacturing experience, the Champlin Company could manufacture and market out of a barrel of 38 gravity Oklahoma City crude, 21 gallons of average 58-60 gravity, 437 end-point gasoline, 1.47 gallons of lubri-

cating oil of average grades, 3.78 gallons of 41-43 gravity kerosene, 2.56 gallons of 36-38 gravity distillate, and 11.55 gallons of 14-16 gravity fuel oil; that when the posted price of 38 gravity crude in Oklahoma City, as of October 25, 1930, was $1.01 per barrel, the market value, based upon the average price of the Oil Price Handbook for 1930, published by the National Petroleum News at Cleveland, Ohio, of such products so manufactured and marketed from [fol. 479] such barrel of crude oil was $1.64; that at that time the gathering and transportation cost of a barrel of crude oil from Oklahoma City to the refinery at Enid, while not sufficiently segregated upon the books of the Company to be definitely stated, may be accurately estimated at five cents per barrel; that to the posted price of the oil in the sum of $1.01, and the gathering and transportation cost of five cents, must be added the refinery cost of approximately 35 cents, making a total expenditure of $1.41 for each barrel of crude oil purchased in the Oklahoma City field, and thereafter manufactured at the Plaintiff's refinery; that thereupon Judge Phillips made inquiry of the witness as to whether "he had based cost on actual costs as near as you could allocate them," to which the witness replied, "yes, sir"; that the Champlin selling price is approximately Mid-Continent average price, and the witness used such Mid-Continent average more as a matter of verification from an outside source than for any other reason; that the witness was sure that the Champlin selling price would be within a very few cents of the $1.64 total; that an outside limit upon such estimate would be "3 or 4 cents";

That when the posted price of 38 gravity crude in Oklahoma City as of December 29, 1930, was 67 cents, the market value based upon the average price of the Oil Price Handbook for 1930 published by the National Petroleum News of Cleveland, Ohio, of such products as hereinbefore set forth, so manufactured and marketed from such barrel of crude, was $1.48; that at that time the estimated gathering and transportation cost of a barrel of crude oil from Oklahoma City to the refinery at Enid remained at five cents per barrel, and that the refinery cost likewise remained at approximately 35 cents, making a total expenditure of $1.07, which represents cost before depreciation on equipment;

That when the posted price of 38 gravity crude oil in [fol. 480] Oklahoma City as of March 5, 1931, was 63 cents,

the market value of such product as hereinbefore set forth, so manufactured and marketed from such barrel of crude; computed as heretofore outlined, was $1.37½ per barrel; that at that time the estimated gathering and transportation cost of a barrel of crude oil from Oklahoma City to the refinery at Enid remained at 5 cents per barrel, and that the refinery cost likewise remained at approximately 35 cents, making a total expenditure of $1.05 per barrel, which represents cost before depreciation on equipment; that when the posted price of 38 gravity crude in Oklahoma City as of June 1, 1931, was 35 cents, the market value of such product as hereinbefore set forth so manufactured and marketed from such barrel of crude, computed as heretofore outlined, was $1.01; that at that time the estimated gathering and transportation cost of a barrel of crude from Oklahoma City to the refinery at Enid remained at 5 cents per barrel, and that the refinery cost likewise remained at approximately 35 cents, making a total expenditure of 75 cents per barrel, which represents cost before depreciation on equipment; that in each of these last two instances, the market value and the Plaintiff's actual selling value came within the 3 or 4 cents estimate hereinbefore made;

That the Plaintiff's average lifting cost of a barrel of crude in the Oklahoma City field, calculated upon the actual cost incurred upon the Plaintiff's properties during the first four months of 1931, was $.053 per barrel; that such figure includes expenditures only, but does not take into consideration investment costs;

That the pine line which the Plaintiff Company had constructed from the Oklahoma City field to its Enid refinery was of the capacity of 18,000 barrels per day, and cost approximately $600,000.00; that the $.053, being 5.3 cents lift-
[fol. 481] ing cost per barrel, represents operating cost on the lease only, and that the 5 cent estimate for gathering and pipe line charges hereinbefore used, includes the cost of gathering the oil from the stock tanks on the lease with the transportation cost thereof to the Enid tank farm, so that the total cost of getting the oil from the bottom of the well to the refinery for manufacturing purposes is $.103, or 10.3 cents per barrel;

That Plaintiff Company had in storage at its Enid Refinery on the respective dates hereinafter set forth the total gallons of gasoline set opposite each of said dates:

January 1, 1931, 7,866,611 gallons;
January 1, 1930, 6,598,533 gallons;
January 1, 1929, 5,196,055 gallons;
January 1, 1928, 6,598,478 gallons;

and on

June 1, 1931, 4,549,092 gallons;
June 1, 1930, 4,712,800 gallons;
June 1, 1929, 6,316,711 gallons;
June 1, 1928, 5,794,629 gallons;

That the witness thereupon identifies a document which has been marked as Plaintiff's Exhibit No. 25, as a statement of interstate and intrastate sales of refined products by the Plaintiff from July 1, 1928, to May 31, 1931, F. O. B. Enid, Oklahoma, segregated by years; that the Exhibit so identified is offered in evidence by Plaintiff, to which the Defendants object as incompetent, irrelevant and immaterial; the objection is by the Court overruled, and the Defendants are granted an exception;

That the witness thereupon identifies a document which has been marked as Plaintiff's Exhibit No. 26, as a statement of interstate and intrastate sales of refined products by Plaintiff in volume by major classification thereof from July 1, 1928, to May 31, 1931; that the Plaintiff thereupon offers in evidence the Exhibit as so identified, to which the Defendants object, which objection is overruled, and the Defendants are granted an exception;

[fol. 482] Thereupon the witness identifies a document which has been marked Plaintiff's Exhibit No. 27, as a statement of the cost in the investment in the Plaintiff's refining plant, pipe lines, tank cars, filling stations, and marketing equipment, segregated into the investments in the various branches of said business within and outside the State of Oklahoma; that the investment cost so itemized represents the costs of equipment employed by Plaintiff from the time oil is reduced to possession at the top of the ground until it is delivered to the customer in tank cars; that the refinery and pipe line investment as of May 31, 1931, shown upon the Exhibit, was $6,986,267.41; tank cars, $1,295,222.21; filling stations, $3,096,681.81; a total of $11,378,151.51; that Plaintiff thereupon offers Exhibit No. 27 in evidence, to which the Defendants object as incompetent,

irrelevant and immaterial; which objection is overruled, and the Defendants are granted an exception;

That thereupon the witness identifies a document marked Plaintiff's Exhibit No. 28, and states that it is a graph drawn to scale showing the purchases of crude oil in Oklahoma by months by the Plaintiff, together with crude oil runs to stills in each month, as well as the average price paid by Plaintiff for crude oil so purchased during each month for the calendar years from 1920 to 1924, inclusive; that thereupon the witness identifies a document which has been marked Plaintiff's Exhibit No. 29, as carrying the identical information for the calendar years 1925 to 1930, inclusive, together with the first five months of 1931; that thereupon the Plaintiff offers Exhibits No. 28 and 29 in evidence, to which the Defendants object as incompetent, irrelevant and immaterial, which objection is overruled, and the defendants are granted an exception thereto; that the [fol. 483] graphs as so drawn accurately reflect the books and records of the Company; were made under the supervision of the witness, and that the two Exhibits disclose an accurate set-up upon their respective subject matters.

Cross-examination.

By Mr. German, of counsel for the defendants:

That the Plaintiff has been buying about 3½ to 5 million barrels of crude oil per year, and during the period of time of such purchases, the price has ranged from $4.81 a barrel in 1920, to $1.33 in 1930, and to an average of 68½ for the first five months of 1931, and that the Company is still in existence. Objection was made to the last portion of the question for the reason that the same was not proper cross-examination; the objection was overruled, and the Plaintiff was granted an exception;

That the Company is not now buying on the average as much crude as it did last year or the year before; that it purchased 4,821,000 barrels in 1929, and 4,660,000 in 1930; [fol. 484] that the witness would use the books of the Company to calculate the gain or loss in the operation of its business; that in order to determine whether the Company is making or losing money in its refinery operations over a period, an income statement and balance sheet would be necessary, and that such income statement should include

the costs of charging stocks, transportation costs, refining and sales costs; interest, depreciation, maintenance, administration and possibly other overhead expenses; that such a statement with reference to the operation of Plaintiff Company's business has not been produced here;

That the Plaintiff's pipe line was built into the Oklahoma City field in the latter part of 1930; that the Plaintiff Company has in this State a great many competitors in the refining business and in the sales of refined products; that these competitors buy crude oil and sell their refined products in competition with the Champlin Refining Company; that there are probably fifty such companies so engaged in Oklahoma; that such other companies may be better refiners and operate their business upon a more economic basis than the Plaintiff;

That the Champlin Refining Company does not "sell a great deal of" crude oil; that Exhibit No. 26 carries crude oil sales for 1930 at 838,405 barrels, and for the first five months of 1931 at 595,431 barrels; that the witness did not know the history of the transactions that made up these items; that Exhibit No. 26 shows that the company sold in intrastate and interstate commerce during the twelve months of 1929 crude oil amounting to 463,328 barrels, and during the last six months of 1928 it sold 3,634 barrels; that the witness was thereupon asked if the Company had been increasing its sales of crude, and replied that if the statement shows that, yes.

Redirect examination:

That the witness did not have personal knowledge of [fol. 485] transactions in the field in the matter of sales of oil or where it was produced; that the figures on the Exhibits identified by the witness were taken from the records without personal knowledge as to the transactions; that the Skelly Oil Company, of which Mr. German is general counsel, is one of the principal competitors of the Plaintiff Company throughout its trade territory.

Recross-examination:

The witness in response to the following questions, gave the respective answers quoted:

By Mr. German:

"Q. The Skelly Company's refinery is at Eldorado, Kansas?

A. I think they have a refinery there.

Q. And have none anywhere else?

A. I don't know.

Q. And don't purchase any Oklahoma crude for their refinery?

A. I don't know.

Q. Have no pipe line into either Seminole or Oklahoma City fields?

A. I don't know.

Q. Don't you know they do not?

A. No, sir.

Q. Have no pipe line into Oklahoma at all."

that when the witness used the term "competitor" he meant from the sales end of the business; that the witness could not recall that the Skelly Company had any filling stations in the immediate vicinity of Enid or Northwestern Oklahoma, but that as soon as the Plaintiff Company crosses the Kansas line it runs into them, just as it runs into the sales end of the business of a great many other refiners that are the Plaintiff's competitors in Oklahoma and in all the other territory where the Plaintiff sells refined products.

Witness excused.

[fol. 486] Thereupon the Court recessed until 2:00 o'clock P. M. this day, at which time, the Court reconvened, all parties present as heretofore, the trial of the above cause was resumed and further proceedings had therein as follows:

Mr. Glasser of Counsel for the Plaintiff, thereupon directed the attention of the Court to the fact that the Plaintiff was engaged in preparing two Exhibits which were to be identified as Nos. 30 and 31, the first of which Exhibits will give the total production of the fourteen major operators in the Seminole area of the producing or working interests in that field, and the second of which will give the

like information for the Oklahoma City field, for all operators in that field that have filed Gross Production Tax Reports as required by law, which Exhibits are being prepared from the original Gross Production Tax records in the State Auditor's office, and that the Exhibits are offered as a part of the testimony of this witness, and when completed will be filed with the Clerk of the Court; that there was no objection, and that the Exhibits were subsequently prepared by this witness and filed with the Clerk of the Court;

RALPH ARNOLD was thereupon called as a witness in behalf of the Plaintiff, and, being first sworn, testified, in substance, as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he resides in Los Angeles, is a Geologist and Petroleum Engineer, with a collegiate education, two doctor's degrees and now has two or three honorary doctor's degrees in the geological field; that he taught the first course in Petroleum Geology and Engineering at the University of Chicago, in Harvard University and in the Massachusetts Institute of Technology; that for six years he was a member of the Geological Survey of the United States [fol. 487] Government, organized the Petroleum Division of the United States Bureau of Mines, had charge of the oil and gas work at the Treasury Department during the war, is chairman of the Advisory Committee appointed by the California Courts in connection with litigation over gas-oil ratios in the Santa Fe Springs pool near Los Angeles, and was chairman of the California delegation to the Governors' Council in Washington last winter; is a member of all scientific societies whose purposes relate to the subject of Geology and Petroleum Engineering; many years ago wrote the first text book on "Phases of Waste" and prepared the first book published by the Bureau of Mines on the subject; that in 1914, or 1915, prepared for the Government, Petroleum Bulletin No. 6, apropos the subject, then acting as Consultant Geologist for the United States Bureau of Mines; that he has been employed as a

practical advisor in geological matters in Canada, the United States, Mexico, Venezuela, Trinidad and Colombia; that the witness classifies himself as a conservationist;

That when asked to define the difference between economic waste, physical waste and underground waste, as understood by geologists and petroleum authorities, the witness stated that his understanding is that economic waste is a waste that results in a waste of dollars and cents when oil is brought to the surface when it is not needed and used for purposes that substitutes might be used, in other words, having to do with the dollars and cents side of the oil business; that physical waste is the actual waste of oil and gas as substances, as where brought to the surface and allowed to evaporate or leak away, and "cases of that kind actually are wastes after we have acquired the oil and gas themselves"; that underground waste is a term that has been used a great deal lately to cover theories with regard to what may take place underground during the recovery of oil; that underground waste is a matter of difference of opinion among men and is absolutely impossible of proof in [fol. 488] practically all cases that have come under the witness's observation; that "conservation is utilization with maximum efficiency and minimum of waste"; that this definition was first announced years ago by Dr. Willard C. Hays, Chief Geologist of the United States Geological Survey during the time when the subject of conservation was uppermost in the minds of the American people during the Roosevelt administration;

That the witness has had personal observation of the operating methods in the Oklahoma City field, and is familiar with the geology thereof; that a study of the Arbuckle Mountain section helps to understand the underground conditions in the Oklahoma City, Seminole and adjacent fields; that the witness has made such study, the principal features of which are that in going up-grade on the south side of the mountains the eye can see what it would see if going down in an oil well in the area, in other words, an examination of the exposed sections of the mountain reveals the well-log that is determined through the drilling in the adjacent oil producing areas; that there is present the opportunity of examining the formations, the characteristics of the sands and limestones, with the relationship of the various beds, their thickness, all of which

gives one a wonderful opportunity to learn something about underground conditions; that there has been an upheaval which exposes the formation in cross-section, and is one of the most remarkable exposures to be seen anywhere, inasmuch as nature has laid open a panorama of underground conditions in these fields for the Geologist's study;

That the following respective answers were thereupon given by the witness, to each of the questions indicated as propounded:

[fol. 489] "Q. I will ask you to state whether in your opinion the present method of handling the Oklahoma City field wells is a wasteful method?

Mr. German: Object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Q. I will ask it another way. What is the present method of handling the Oklahoma City oil field wells?

A. To open the wells intermittently to test their capacity for production, and then to shut them in to a very marked degree for long periods of time, between these periods of open flow.

Q. Is that a wasteful method?

Mr. German: That is not the way the wells are operated at the present time in the Oklahoma City field.

Cotteral, J.: We don't know.

Phillips, J.: He says it is.

Mr. German: But the proof is they are operated upon a percentage basis, and if that is what the witness meant all right.

By Mr. Glasser:

Q. To clarify the situation do you understand the method under which the Oklahoma City wells are now operated?

A. My understanding is——

Q. Just yes or no.

A. I believe I do.

Q. Will you state for the record what you understand that method to be and see how it lines up with the other testimony?

A. My understanding is these wells come in, in order to find out their relative productivity they are opened up wide,

full capacity for four hours; then they are shut in to a certain amount, that is prescribed by the Commission, the umpire or some other authority, shuts them down to practically two per cent of their capacity.

Q. Now if a well is kept closed for a 65 day period absolutely tight, before it is allowed to produce any oil, does that factor enter into your calculation in this connection?

[fol. 490] A. If it is kept absolutely [illegible]ed tight before it is brought in, the conditions under ground will be the same at the end of the 65 days as they were at the start. It is only for the periods of wide open production that the trouble begins in the bottom of these wells.

Q. What trouble, in your opinion, begins?

A. Well, a great development of gas around the well. When a well is opened up for initial production and allowed to flow unrestrained there is a terrific pressure at the bottom of the hole, and it is much greater there, of course, than at the top or it wouldn't flow, but the gas that is held in solution in the oil is allowed to come out very rapidly, and it throws out a great deal of oil up to thousands and thousands of barrels a day, and gas comes out at the rate of millions and millions of cubic feet, and what is known as the gas oil ratio is usually pretty large at that time. The gas comes out and the minute they are shut in the space around the bottom of the well fills up with gas because the gas has a head start, bypasses the oil and gets in around the base of the well, and when the well is suddenly shut in it leaves that gas surrounding the well. Now exactly what happens to the surrounding reservoir after that is shut in we know very little. We are making studies in these various fields. I have no doubt in this field some of the larger companies are studying the conditions that are probably existent at the bottom of the hole, and in the reservoir opposite or adjacent to it, but from what knowledge I have been able to obtain from the engineers of the principal companies, those who are operating in the field, those who are making this special study, I find there are just about as many ideas as to whether there is waste or whether there is not waste, as there are individuals I have interviewed.

Mr. German: I want to renew my objection, and predicate it upon this proposition: The witness admits that there is a divergence of opinion as to whether or not this method

is wasteful or is not wasteful. The Corporation Commission pursuant to the language of the statute, decided after the taking of testimony that this was a proper way to operate these wells to take the potentials, and then pinch them in on a percentage basis afterwards, and that to operate the wells in the form and manner in which they are operated accomplishes conservation, prevents waste and protects the co-equal rights of the producers in the field. Now the Commission having decided that question, predicated upon testimony taken by it, it is not subject to review here under the allegations of the bill. It is simply alleged that there was no evidence before the Commission showing that waste would occur; no proof on that subject has yet been made, but I take it they will introduce in evidence the testimony before the Commission and contend it fails to show that there was any proof of waste, but here we have a case [fol. 491] where experts may differ in their opinion and do differ in their opinion.

(Argument.)

Cotteral, J.: Let's receive the evidence and we will consider its relevancy later.

Mr. German: Exception.

By Mr. Glasser:

Q. Are there well recognized methods of control in the production of oil and gas?

A. Yes, there are. I think what you mean though is what we speak of as the control in the occurrence of oil and gas in the well itself.

Q. What are those well recognized controls?

A. It is rather a technical term. There is hydraulic control, volumetric control and capillary control. To just briefly explain what they are; there are certain underground reservoirs in which the laws of hydraulics control. Those are the coarse grain sands and lime stones, coarse lime stones and things of that kind, and then there are other fine grain sand stones in which the laws of capillarity control. The action of gas and oil and water in those various reservoirs are entirely different under the different type control, so that postulations regarding what occurs

in one case would be entirely different under another control.

Q. How do you determine which control the pool or field is under?

A. The best way, if we know the rate of decline of production and the rate of decline of the pressure in the wells, we can tell absolutely. If the rate of decline in the pressure is greater than the rate of decline in production we have volumetric control. If the rate of decline is greater that the pressure we have the capillary control. Under the capillary control, the edge water, for instance, in the field, never encroaches on the field itself except very slightly at the edge. The Cushing field is one of the illustrations of that where hydraulic and volumetric control prevail. The hydrostatic pressume is the controlling factor and edge water and bottom water are pressing against the oil at all times; move it.

Q. Does the withdrawal of the oil from the field either in a short period of time or over an extended period of time enter into this discussion?

A. Yes.

Q. Will you amplify that please?

[fol. 492] A. Well, some people take the stand that the rapid production of an oil well will create waste, that is, means the water will come in quicker. Now the reason in a great many cases the water comes in quicker is because the production is taken out quicker. We have a 30,000 barrel well producing it wide open for ten days that produces 300,000 barrels of oil, and if it is under hydrostatic pressure, 300,000 barrels of water will follow that oil up, and if the well happens to be within the range where the water and oil contact, the bottom of the well, you begin to get water, but if you produce that oil over a period, say 500 barrels a day, that would take it about 60 times as long, it is natural the water would take 60 times as long to come into the well.

Q. Is there any way by which an engineer or geologist can determine for certain which method will get the greatest volume of oil?

A. No, sir, I don't think there is."

That in the opinion of the witness, and from the data which he has been able to get, he was of the opinion that

the Arbuckle lime area in the Oklahoma City field is probably under volumetric control and that such control will also be found in the upper sand of the Simpson in what is known as the Wilcox; that the School Land formation has so far shown very little evidence of water and being of thinner grain, would indicate that it is under capillary control; that intermittent production in the wells in this field would tend to make the conditions around the base of the well very unstable; that the witness thinks

"it almost impossible to determine which control would prevail in the different formations in said field, until some stable conditions of production were brought about, where the wells would be allowed to flow over a certain period of time under a certain amount of restraint."

that within the experience of the witness, a producing area in Trinidad, British Colombia, where the sands were of very fine grain, with very great gas pressure, in which the original well came in at a very large flow, of approximately 30,000 or 40,000 barrels a day, the greater part of the recoverable oil was obtained in the first four or five days of production; that the wells would then sand up, [fol. 493] after which the operators would drill out the sand, and the best production that could be gotten would not exceed 500 barrels a day for the rest of the life of the well; that as a result thereof, 200,000 barrels of oil were produced in five days, which, if produced in any other manner, would have taken years to bring about; some of the results there showed that the well produced very much more than 50% of its ultimate production in the first five days; that a Mr. McKnight, one of the best American operators employed the theory of perforating the casing in an effort to produce these wells, and after having spent $200,000.00 or $300,000.00 in an effort to produce the oil in that manner, found that he could not get nearly as much oil as when the well was produced wide open; that the witness is not citing the illustration as a rule, but as a situation; that in California wide open flow has been used over practically all of that state's fields for a great period of time, until the last five or six years and has had the greatest recovery per acre of any oil state in the Union, which causes the witness to hesitate upon the adoption of the theory of the curbing method of producing oil wells, as bearing upon ulti-

mate recovery; that a constant flow of a well in the Oklahoma City field under reasonable restrain would more nearly conserve the natural resources of the field than to intermittently "open flow" the identical well; that assuming that a given well has an allowable production of two per cent of its potential, and assuming that the operating company owning such well flows it wide open for two or three days to get its allowable for that month, and thereafter closes the well down for approximately 27 days remaining in the month, such type of operation would be more wasteful than the steady flow of such well under restraint; that a method of production which permits an operator to take within three or four days his entire allowable production in a given well, for a given month, is in the opinion of the witness, a wasteful method; that the method of production which would give the greatest recovery per acre in the Oklahoma City field is that method [fol. 494] which would result in the use of the best gas-oil ratio, that is, the method of production which would place a barrel of oil at the top of the ground with the use of the least amount of gas in doing so;

(a) for the reason that gas energy, which is the motive power of ultimate recovery, is thereby conserved; and

(b) "the conservation of that gas and its use after it reaches the surface of the ground is in the line of real conservation of natural resources";

that the witness does not know what would be the best gas-oil ratio in the Oklahoma City field, because of the lack of sufficient data at the present upon which to base an intelligent conclusion;

That the following respective answers were thereupon given by the witness, to each of the questions indicated as propounded:

"A. Because it practically requires a study of each individual well to discover just what is the most economic way to handle it, just what the best gas oil ratio is. That study can be made without opening the wells wide open——

Q. How?

A. By just changing the pressure.

Q. Explain that please.

A. Well, the control of the pressure in a well can be effected in two ways. You can either have your well finished up with just the casing in which case the oil comes into the casing and has to come out of the top of the casing or you can put in tubing inside the casing and by shutting off the flow of oil through the casing, force the oil out of the tubing. The smaller the tubing within reasonable limits you put in a well of that kind and the smaller hole you make the gas force the oil through, the more effective is the propulsive power of the gas. To find out the exact ratio between the gas and the oil under conditions of that kind is a matter of test, and that is being carried out in a good many fields in the United States at the present time, and could be readily carried out here if the wells were finished with tubing, but I understand a great many of the wells are not finished with tubing and it would involve serious difficulty in putting tubing in at the present time; the cost would be quite considerable for a well; probably five or six thousand; possibly more.

[fol. 495] Q. Is there in your opinion sufficient data now available on the Oklahoma City field that will enable any of these engineers to determine the proper gas oil ratio on a given well?

Mr. German: I would like to object to this question. I have let the questions go on about whether they ought to have a gas oil ratio system in the Oklahoma City field and what would be the best one without objection. I didn't know he was going to proceed so long. The law of Oklahoma doesn't call for a gas oil ratio. It is immaterial to any issue in this case as to what would be a proper gas oil ratio or whether it could be established.

Kennamer, J.: He already answered and said there wasn't sufficient data to determine that.

Mr. Ramsey: That is the main ground the Corporation Commission acts on. They claim they are losing gas over here.

By Mr. Glasser:

Q. Is the term 'underground waste,' a substantive fact in petroleum engineering?

A. No; not at the present time.

Q. Now is there any recognized, accepted method of determining under-ground waste?

A. None so far as I know.

By Phillips, J.:

Q. Isn't there such a thing as drilling an oil well or operating it in such a way that it will lose the maximum recovery under the ground?

A. They say so, yes.

Q. Don't you know that?

A. It is a matter that is very difficult to prove.

Q. I know there are things difficult to prove, but aren't there recognized methods of efficient and proper operation?

A. Yes, sir.

Q. In setting your casing and so on?

A. Yes, sir.

Q. That is looked upon as wasteful?

A. Yes, sir.

Q. When you don't follow the best method don't you lose under-ground?

A. We assume we do, but in a number of cases we find what we originally thought were wasteful methods have turned out to be the very best methods of production in the [fol. 496] field. I can cite another California field——

Phillips, J.: I don't care about any more speech-s on California. All I care about is the local situation.

A. The local situation may develop something of that kind; I don't know."

Mr. Glasser resumes the examination of the witness:

That the factors that govern gas-oil ratio are natural and artificial; that the natural factors are those of production, which are the type of reservoir, rock pressure, the character of the oil, and the volume of the gas, etc.; the artificial factors are the methods used in drilling the well, its completion, the way it has been tubed and the way that it is handled after it is completed into the oil sands; that gas-oil ratios will not be found to be the same in each well, and will not remain constant in any well; that each well remains a problem within itself; that the behavior of each well can only be considered, and thereafter calculated upon

physical or actual tests, which are the only methods recognized by competent engineers;

That the best measure of conservation in the final analysis is that measure of conservation that makes possible the most good that can come from our natural resources; that the ultimate recovery per acre would be as good a measure as any; that in the opinion of the witness, the flowing of the well steadily at an oil-gas ratio that would be determined as best for each particular well, will result in the greatest ultimate recovery per acre from the Oklahoma City field; that the witness doubts if any such wells should ever be flowed wide open; that in witness's opinion the unrestricted pinching in of a well to say, 2% of its potential, has an injurious effect upon the well; that the witness is unable to say what would be the best percentage of the total production at which the wells could be operated, but would say offhand from practical experience, that somewhere between [fol. 497] 33⅓% and 66⅔% would probably be about the best; that physical factors upon a scientific basis cannot very well be co-ordinated in the interest of conservation with economic factors incident to proration, for the reason that the operator does not always, whether selfishly or otherwise, try to get the oil out of the reservoir at the least expense to the gas reserve, which is the great natural resource along with the oil; that the amount of oil that may be so produced in a given well should be determined by gas-oil ratio, and if interference with such gas-oil ratio be brought about by arbitrary rulings, the best results will not be had; that posted price of any product should not enter into the matter of its true conservation; that that kind of conservation is economic; that the witness was not permitted to answer as to whether any system of scientific control of the oil producing areas in the State under a system of proration should be in the hands of outside agencies rather than in the direct control of the officers of the State, to which ruling of the Court the Plaintiff was granted an exception.

Cross-examination.

By Mr. German, of counsel for the defendants:

That the witness had actually spent something like a week studying the Oklahoma City pool conditions, first in

the field, then in his office in Los Angeles, going over data which he believed to be effective, and then returning and in company with R. L. Clifton, who has heretofore testified, spending two or three days in going over the details and engaging in conversation with a number of Engineers of other companies since the witness had been in Oklahoma; that some control of the production of oil in a flush field should be invoked to conserve the oil; that such control should depend upon local conditions; that the State of California has a gas-oil ratio statute and that the witness has made a special study of that subject in his work in that [fol. 498] State; that the witness, in response to the question,

"Q. You say that the question of underground waste is not at the present time a determined fact? Did you say that?"

replied:

"A. I think I made the statement it was very hard to prove."

for the reason that oil fields have been thought to have been finished and new methods of operation thereafter have enabled the owners of such areas to greatly increase their ultimate recovery; that such recoveries are the result of turning to advantage a prior mistake; that waste must be confined to something you actually have in your possession;

Thereupon the following questions were propounded to the witness, and the respective answers as indicated, given:

"Q. Well, if you leave the oil in the ground unrecovered when you could have recovered it by proper operation, that is underground waste isn't it?

A. Yes, you can define it that way, but you have to prove, of course, that the oil is there, or found it out afterwards the oil is there.

Q. That would be underground waste, if you find out afterwards that the way you operate the pool left in the ground oil which if you had operated some better way would have been recovered, then you would have found out you committed underground waste?

A. I would answer it this way: When the oil was recovered under the original method of use you couldn't re-

cover any more, so there wasn't any such thing as the other method in existence; nobody knew about it.

Q. They didn't happen to know about the other method.

A. Of course, they didn't.

Q. If they had known it they would have produced underground waste?

A. Of course. It wouldn't have been called underground waste because it would have been called the regular method of production of oil and gas for that field.

Q. Would it not be entirely possible for serious underground waste to occur in the Oklahoma City field?

[fol. 499] A. Would it be possible?

Q. Yes, sir.

A. Certainly, I say it is possible.

Q. And would be due to the improper method of operating the pool?

A. Not so much sometimes as the improper method in finishing the wells.

Q. As well as in operating the wells?

A. Yes, more likely the first case."

That by a theoretical method of calculation, in the formation, gas is first, then underneath it is the oil in which gas is held in solution and then water is underneath the oil; that the oil cannot be recovered if the wells are finished by seating the casing up in the free-gas area instead of seating it near the top of, or in the oil-saturated portion of the formation;

That the following question was propounded to the witness:

"Let us assume the Oklahoma City field operators all finished their wells with the casing seated up in the gas, and operated them that way, when all producers could find out the other way wouldn't they commit serious underground waste?"

to which the witness replied:

"They would commit a crime, I would think."

and that such waste cannot be put under the classification as being incident to recovery methods but should be classified as the result of faulty drilling methods; that, however

classified, the result in the opinion of the witness would be underground waste; that thereupon, Mr. Ramsey, of Counsel for the Plaintiff, addressed Mr. German with the query:

"Do you contend that all or any of the operators in the Oklahoma City field have put their casing on top of the gas?

Mr. German: Some did and some did not.

Mr. Ramsey: Has the Commission ever made any rule or order about that kind of casing?

[fol. 500] Mr. German: The Commission has had it before them but it hasn't issued any regulation on the subject."

That thereupon certain questions were addressed to the witness, which were in their respective order answered as follows:

By Mr. German:

"Q. Now the term underground waste has been a term used in the oil industry for many, many years hasn't it?

A. Yes, sir.

Q. How long would you say?

A. Well, I used the term waste in a little different sense than that in a publication back in 1914; that was 17 years ago.

Q. You didn't use the word underground waste there?

A. No. It was in connection with the gas that was produced with the oil and allowed to go to waste after it reached the surface of the ground.

Q. You do know, don't you, the term underground waste was commonly used, at least as early as February 11th, 1915 by the oil industry?

A. I don't know that I did, but I should say it probably had been a good while before that.

Q. And it had a commonly understood and accepted meaning in the industry?

A. Well, that is a point I can't state, because it is a very indefinite term. Through all the period I have been in the industry for thirty years, it has been a very indefinite term.

Q. Broadly speaking, underground waste means leaving oil underground that could have been recovered, doesn't it?

A. That is one definition of it.

Q. That is the way oil men look upon it, isn't it?

A. Another way is allowing water into the oil. You can deteriorate the quality of the oil by letting water mix up with it.

Q. Would you call that underground waste?

A. I would call that waste, underground waste, but the actual determination of it is one of the most difficult things, I think.

Q. What do you mean actual determination of it?

[fol. 501] A. For instance, when you bring water in contact with the oil under ground, and when the oil reaches the surface of the ground, it has a gravity of 24 degrees say, 24 gravity, and we say that probably the oil originally had a gravity of 29 degrees. We say we think it did, but the only oil that ever came out of that well came out about 24.

Q. The occasion for saying that underground waste occurred there is because the oil producer concludes that he has done something which reduced the gravity of the oil from 29 to 24?

A. He thinks he did. It is very had for him to prove it.

Q. You can't look down into these oil formations with an X-ray, can you?

A. Well, we do it sometimes when we drive a tunnel into vertical beds and get the same results, but ordinarily no.

Q. So all of your knowledge about the formations in which oil has accumulated and all of that and as to the best way to recover oil in order to obtain the greatest recoverable oil, is predicated upon the knowledge you have acquired from a study of things that have happened in the oil fields?

A. Yes, sir.

Q. Primarily, isn't that right?

A. Yes, sir.

Q. And you realize that underground waste can occur?

A. Yes, indeed.

Q. Now the ideal, the best system to which you refer, or counsel did, I have forgotten which, is the one which will recover the most oil isn't it?

A. Most oil for the least loss of energy or power or whatever it is we are utilizing to bring the oil to the surface."

That most of the formations in California are rather coarse, those in Trindad very fine; that the sands in California as a rule are very thick, thousands of feet of alter-

nating shale having been found; that Counsel asked the witness if the conditions which existed in California do not call [fol. 502] for methods quite different from those in Oklahoma, to which the witness replied:

"That is what * * * we are so uncertain about. With all our methods we have very little definite information. Geology is not an exact science. For that reason it is very hard to make a positve statement about it.";

that conservation of gas energy and the proper utilization thereof in the recovery of oil, is one of the most important matters before the American people at this time; that there are two profound reasons for this statement, the one being that there will be a greater recovery of oil, and the other that the gas will be produced at the time and in a way in which it can be used for the production of casinghead gasoline and as a fuel after it has performed its operation of bringing the oil to the surface; if the gas is not produced too fast, it can be utilized instead of being turned into the air;

That Judge Phillips at this point addressed certain inquiries to the witness, which we quote:

By Phillips, J.:

"Q. You might be operating a given well or drilling in a given oil sand; one set of experts might say the way to do this is to get the most recovery and suffer the least waste underground is this way; another set of experts in equally good faith, might give as their judgment an entirely different way, and yet when it is all over if you can figure it out and have an exact determination one might be better than the other. One might develop waste and the other not, yet both of them could be in good faith in the light of their experience?

A. Yes, sir.

Q. That is what you mean when you say this underground waste is uncertain and indefinite?

A. That is just what I mean; a question of personal opinion and personal experience.

Q. Yet there might be underground waste resulting from negligent operation.

A. I think there are certain phases of it obvious even to the layman.

Q. For instance, your example of setting the casing in the gas itself instead of in the gas saturated with oil?

A. Yes, sir, it wouldn't take an engineer to figure that out.";

[fol. 503] That a large well often times offsets a dry one, proof to some extent at least, of the uncertainty of our knowledge of conditions underground;

That in the present state of the industry, a method has not yet been found that will enable any producer to recover all of the oil in an oil-bearing sand, so that in all production in all of the oil fields, there is some oil ultimately unrecovered; that methods are now being sought to remedy this situation; that methods have been found which enable the producer to take out a large per cent. of the oil which has heretofore been unrecovered; that such practice is now being employed in the old wells in Pennsylvania.

Witness excused.

E. G. WILMOTH was thereupon called as a witness on behalf of the Plaintiff, and, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he resides at Enid, Oklahoma; has been employed for the past four or five years in the capacity of Manager of the pipe lines of the Champlin Refining Company; that the witness had personal knowledge of the transactions involved in the entries upon the Plaintiff's books set forth in Plaintiff's Exhibit No. 26, which indicate that the Champlin Company had sold 838,405 barrels of crude oil during 1930, and the like sale of 595,431 barrels of crude oil during the first five months of 1931; that such entries were matters of bookkeeping only, and represented trades in oil in which a producer would exchange oil in one locality with Champlin, in exchange for oil produced by Champlin in another locality; in other words, the oil which such producer would take from his property is shown on the books of the Champlin Company as having been purchased, and the oil

produced by Champlin and delivered to such producer in exchange therefor as a sale; that the Champlin Refining [fol. 504] Company during the years 1930 and 1931, has not sold any crude oil it has produced in the Oklahoma City field to any person whomsoever, that in some one of the other fields a small volume of oil was exchanged with the Magnolia Company;

That a paper marked Plaintiff's Exhibit No. 32 is identified by the witness as a graph which compares Champlin's price for 39 gravity crude oil with the price posted by the Prairie Oil & Gas and Stanolind Companies from 1920 to 1931, inclusive; that the graph was prepared by Mr. Collier, under the supervision of the witness; that Plaintiff thereupon offers in evidence Exhibit No. 32, so identified, to which the Defendants object as incompetent, irrelevant and immaterial; which objection was overruled and the Defendants were granted an exception.

Cross-examination.

By Mr. German, of counsel for the defendants:

That the Champlin Company has posted a price for crude oil for a long time, which means that it offers to buy crude oil at the price so posted.

Witness excused.

That thereupon, Mr. Ramsey, of Counsel for the Plaintiff, offers in evidence certified copies of the Orders and Journal Entries of the Corporation Commission of the State of Oklahoma, beginning with Order No. 5189 of June 30th, 1930, down to date, all to be marked as Plaintiff's Exhibit No. 33; the Plaintiff also offers in evidence as Plaintiff's Exhibit No. 34, a true copy of the Petition of Otto Bradford, verified June 27th, 1931, by Ralph G. Thompson; and also offers in evidence Plaintiff's Exhibit No. 35, a certified copy of the Corporation Commission's Order No. 5448, of June 27th, 1931, based on the petition identified in Plaintiff's Exhibit No. 34; Plaintiff also offers in evidence a copy of the Corporation Commission's Order No. 847, identified as Plaintiff's Exhibit No. 36, that the copy so offered in evidence was not a certified copy, which

defect was waived by Mr. German of Counsel for the De-
[fol. 505] fendants, reserving an objection as to its competency, relevancy and materiality;

That Mr. Ramsey, of Counsel for the Plaintiff, then stated that he wished to offer five other Orders made along the latter part of 1914, and in 1915 and 1916, for the purpose of showing that the Corporation Commission was fixing the price of oil at the time the Act was passed, and in support of the offer, states that within the rule of statutory construction, the Court may review the history of the period of the time when the Act was passed, and therefrom ascertain the theory of the legislation.

Plaintiff thereupon offers in evidence Exhibit No. 37, being copy of the Order of the Corporation Commission, No. 846-A, undated, but appearing in the printed reports of the Commission and evidently made sometime in the latter part of 1914; and also offers in evidence Exhibit No. 38, being a copy of Order of the Corporation Commission, being Order No. 844, also undated, but evidently made in September 1914; and the Plaintiff also offers in evidence its Exhibit No. 39, being an Order of the Corporation Commission No. 846, dated September 22, 1914; Plaintiff also offers in evidence Exhibit No. 40, being a certified copy of findings of fact, opinion and Order of the Corporation Commission, No. 1022, dated February 18th, 1916; to the introduction of all of which, the Defendants object, for the reason that same are incompetent, irrelevant and immaterial;

That Judge Cotteral announced that

"We reserve an opinion about the Orders, but have concluded to allow them to go into the record for whatever they may be worth. At the present time we overrule the objection";

to which the Defendants except;

That the Plaintiff thereupon offers in evidence a certified transcript of the Petition for a Writ of Prohibition in the case of C. C. Julian Oil & Royalty Company v. Fred Cap-
[fol. 506] shaw, et als., in Cause No. 21,640, 145 Okla. 237, also 292 Pacific 841, filed in the Supreme Court of the State of Oklahoma on August 28th, 1930; together with all Exhibits attached thereto and the brief of Counsel for the Petitioner, which offer is made for the purpose of showing

that some of the issues raised here were not raised there; to which offer the Defendants object as incompetent, irrelevant and immaterial, upon which Judge Cotteral announced that it should

"go in under the same rule. We reserve our opinion for the present";

and again Mr. German takes an exception.

RAY M. COLLINS, recalled as a witness on behalf of the Plaintiff, further testified, in substance, as follows:

Redirect examination.

By Mr. Glasser of counsel for plaintiff:

That it is a matter of common knowledge that the witness is drawing $24,000.00 a year as Umpire, under the Proration arrangement; that if the members of the Corporation Commission do not have knowledge of such fact, they ought to know; inasmuch as it has been disclosed in some of the hearings before the Commission, including a hearing in the fall of 1930; whereupon, Judge Cotteral asked:

"Has there been any secret about it?"

to which the witness answered:

"No, sir; there has never been any secret as to who paid or the amount paid."

Witness excused.

ALVIN RICHARDS was thereupon called as a witness on behalf of the Plaintiff, and, after being duly sworn, testified, in substance, as follows:

Direct examination.

By Mr. Glasser, of counsel for the plaintiff:

That he lives in Tulsa, Oklahoma, is a lawyer by profes- [fol. 507] sion, connected with the Legal Department of the Pure Oil Company, and is chairman of the State-wide Proration Committee for Oklahoma; that the Pure Oil Com-

pany does not have any production in the Oklahoma City field, and has considerable production in the State of Texas;

Cross-examination.

By Mr. German, of counsel for the defendants:

That the witness has been chairman of the State-Wide Proration Committee since the last of October or November in 1930; that the other members of the Committee are:

Burdette Blue of the Indian Territory Illuminating Oil Co.;

Joe Sidwell of The Prairie Oil & Gas Company;

R. M. Young of The Carter Oil Company;

Wirt Franklin (of Wirt Franklin Company and the Franklin-Cromwell Company);

Mr. Filley of The Texas Company;

Mr. Nicholas of the Continental Oil Company; and

H. B. Fell of Ardmore, Oklahoma;

that the witness does not know absolutely which members of the Committee have production in the Oklahoma City pool or what companies do, but knows that The Prairie Oil & Gas Company has production there; that Wirt Franklin has a great deal of production there; that the Indian Territory Illuminating Oil Company has a great deal of production there; that Wirt Franklin has no production whatever in the Seminole field and that the Indian Territory Illuminating Oil Company has a tremendously lot more in the Oklahoma City field than in the Seminole; that C. C. Herndon of the Skelly Oil Company was the witness's predecessor as chairman of the State-Wide Proration Committee, and that Skelly Oil Company has larger production in the Oklahoma City field than it has in the Seminole area.

Witness excused.

J. H. Miley was thereupon called as a witness for the Plaintiff and, being first duly sworn, testified, in substance, as follows:

[fol.508] Direct examination.

By Mr. McKeever, of counsel for the plaintiff:

That the witness is a lawyer, a member of the firm of Miley, Hoffman, Williams & France, formerly Burford,

Miley, Hoffman & Burford; that the members of the firm of which the witness is a member, do not represent any oil company generally, but are employed by the Prairie Oil & Gas Company, by the Indian Territory Illuminating Oil & Gas Company, and by the Phillips Petroleum Company, at times, in special matters; that the witness was recently employed by the Standard Oil Company of Indiana in a suit brought under the Anti-trust Act in Ottawa County, Oklahoma;

Cross-examination.

By Mr. German, of counsel for the defendants:

That the witness's firm is also employed upon a per diem basis to represent the Oklahoma City Producers' Association in matters before the Corporation Commission, or before the Court, and that the witness is now appearing in this case at the invitation of the Attorney General, and any compensation will be paid by the Oklahoma City Producers' Association; that the Attorney General requested Mr. German and the witness to appear in this case and assist in the preparation and defense thereof on account of the fact that Mr. German had been connected with this matter from the beginning and had studied the law of the case very fully, and the witness does not know why he (the witness) was so invited; that the Oklahoma City Operators' Committee has at different times requested the witness to prepare petitions, present evidence for them in matters before the Corporation Commission; employment having originally been handled by Judge Burford and the witness having acted in that behalf since Judge Burford's recent death;

Witness excused.

Thereupon Mr. McKeever, of Counsel for Plaintiff, propounded certain questions to Mr. German, of Counsel for the Defendants, who stated that the State was not paying him for his appearance in the case, nor is anyone else and [fol. 509] that he did not expect any compensation.

Thereupon, Mr. Charles J. West announced that he would like to have permission to cross-examine Mr. Clifton, which request was granted by the Court.

R. L. CLIFTON, recalled for further cross-examination by Mr. Charles J. West, who stated that he

"represents the Governor of the State of Oklahoma, and for sixteen years has never been employed by an oil company";

that the witness thereupon stated that the Naden Well No. 1 is located on four town lots which equal in area approximately three-fourths of one acre; that the McCalep Well No. 1 is located on eight town lots; that the Seal Wells Nos. 1 and 2 are located on a five acre tract; that the witness was questioned as to markets, pipe lines and the use of railroads, concerning all of which he disclaimed any knowledge.

Witness excused.

Plaintiff rests.

Mr. Miley, of Counsel for the Defendants, thereupon offers in evidence Defendants' Exhibit No. 1, which is agreed to be a correct compilation by the Auditors of the Champlin Refining Company, of the crude oil production from each of the Champlin Wells, i.e.; the McCalep No. 1, Naden No. 1, and Seal Nos. 1 and 2, by periods; no objection by the Plaintiff.

[fol. 510] J. R. MCWILLIAMS was thereupon called as a witness upon behalf of the Defendants, and, after being first duly sworn, in substance, testified as follows:

Direct examination.

By Mr. German, of counsel for the defendants:

I live in Tulsa, Oklahoma. I am a petroleum engineer and hold that position with Skelly Oil Company. I have been with the Skelly Oil Company a little over six years. I have made a special study of the Oklahoma City field and the Seminole field.

(At this point counsel for the respective parties admit that the witness is a duly qualified petroleum engineer.)

Skelly Oil Company has and is operating 20 producing wells in the Oklahoma City field. It is drilling two addi-

tional wells in the said field. Its first well in said field was brought in about a year and half ago. Its wells in said field produce from the Wilcox, Green Shale, School [fol. 511] Land and Johnson sands or formations. The Green Shale sand is not known by any other name, that being its common name. It lies between the Wilcox and School Land sands, and generally if you are going to classify it with one or the other it would be called the School Land sand, but it has different characteristics and is a different sand.

In my opinion, water encroachment very seriously affects the ultimate recovery of oil due to the fact that the pressure in the reservoir is generally due entirely to the water pressure or hydraulic pressure, and the ability of the water to move through the sand. Let me explain it this way. Viscosity is the ability of a fluid to travel through a sand. If you had two tubes and through one of them you poured a quart of gasoline and the other a quart of molasses, the gasoline would travel through the tube much faster. Now water has the ability to travel through a sand faster than oil so long as the oil has no gas in solution with it, but if there is gas in solution with the oil, then the oil will travel through the sand easier than the water. If the well is opened wide open thereby permitting a hurried pressure at the bottom of the well and water is close to a nearby area and the well is drained of oil and the gas leaves solution with the oil, then the water has an opportunity to reach that well, and as we say, cone up into the well, and when that happens it gradually cones higher until it more or less leaves the oil in islands around the well, and when that happens it is very difficult, if not impossible, to bring that well back into oil production, so in my opinion, any flush oil field should be pinched back from the start in order to keep the gas in solution with the oil and to hold back water encroachment.

To whatever extent water encroachment operates to shut off oil, to that extent there is underground waste. In order to accomplish the best ultimate recovery from a pool, you [fol. 512] must take into consideration that nature has left the oil, gas and water in positions of relative weight. The gas being lighter is in the top of your structure; the oil being the next to the lightest is positioned below the gas, and the water being the heaviest is positioned below the oil. Oil has the ability to absorb great quantities of gas when

under pressure. You must take into consideration that the oil and gas are in a pocket because the water has flushed them up into this high point, and if you tap this reservoir with a series of wells, and then if you will take your oil out and gas sufficiently slow so your water encroaches symmetrically then you will materially increase your ultimate recovery. To operate your pools in that way would take a great length of time but we can approach it by at least pinching our fields back, and the more we pinch them back with due reference to efficient operation, the more we should increase our ultimate recovery. Oil and gas migrate in the formation whenever wells are drilled into it. The gas will migrate much greater distances than the oil because the viscosity of the gas is much less. The oil will migrate, but it only migrates because of the hydraulic water pressure, or because of the fact there can be drainage of both oil and gas from one tract of land through a well upon another. In order to accomplish the greatest ultimate recovery, each well should be operated at approximately the same percentage of its maximum capacity. If one well is allowed to operate at a higher per cent of its maximum capacity than another, the pressure around the bottom of that well will be lower than around other wells because of the quantity of oil and gas taken out. In other words, you take out a great volume of oil and gas, something must occupy that space of lowered resistance in the sand, consequently you create the lower pressure around the bottom of the well. If this condition continues, channels set up through the more porous areas of the sand which will extend considerable distances, and if the condition of one well operating at a great capacity [fol. 513] continues these channels will reach considerable distances. Now you must consider that each barrel of oil as it lies in place, wherever it is, has a certain amount of gas in solution with it, and that gas can never take a full hundred per cent of that oil to the well, consequently, the further distance this gas must move the oil the less that will arrive at the well. Therefore, two wells should not encroach upon one another's drainage area because a well that is operated at a greater capacity will attempt to drain oil from the other area, and that well could produce with the same amount of gas a higher percentage and the difference that is left in the sand in my opinion is underground waste. This results in the underground waste of oil which could have been re-

covered if both wells were operated at the same percentage of their capacity.

As definite illustration of drainage and migration in the Oklahoma City field, we have one case of an offset well that was drilling the sand, and our well was under production. In the drilling of this well they had what we call rotary mud which you pump down through a pipe and it washes the cuttings out of their drill. The weight of this rotary mud must be more than the pressure in the sand or the well would blow it out. While our well was operating we commenced to produce rotary mud and this well had produced 200,000 barrels of oil before this mud ever showed up, so we can assume that was not at the bottom at the start. We had operated it many months before we found this offset well was losing returns; that is, they were putting mud into the wells they were not taking out. In my opinion, that is definte evidence that that rotary mud traveled through the sand and produced through our wells. On the surface those wells are from 200 to 300 feet apart. These wells are not in the town lot section of the Oklahoma City field. The wells are on five acres each. It is possible [fol. 514] for these two holes to vary so much that they come together at the bottom, but there are several cases in the Oklahoma City field where this rotary mud shows up. I am of the opinion—those wells were closely spaced and possibly they came close together, but it shows definitely in my opinion that mud will travel through the sand. We have another definite case on one of our leases of the migration of oil and gas. We have one of our old wells producing a certain amount of oil, and the property located north of us is producing from the same sand, but that property in addition has two wells which are cased above a higher sand. In other words, there are two sands exposed in that well. This upper sand has the pressure of about three times the lower sand, and with the wells closed in, gas migrates. That is my deduction, migrated from the upper sand into the lower sand. While this re-pressuring operation was going on, the decline on our wells was quite rapid, even under proration. We brought it to the attention of these operators, this condition, and they voluntarily went in and stopped this re-pressuring action, and after a period of time, thirty to sixty days, something like that, our wells over night increased in production. They were flowing under the choke, and just to test out this phenome-

nal experience we opened these wells wide open and one of the wells made seven times the potential it had sixty days before. Another well made three times the potential it had sixty days before and that is very unusual for a well to increase in production. My picture is this higher pressure had driven the oil down slope below our wells and when the re-pressuring stopped it pushed it back up to our wells. In my opinion, that is evidence that oil and gas do migrate underground.

If the Oklahoma City field is not allowed to produce in excess of 250,000 to 300,000 barrels per day, and taking [fol. 515] into consideration only the area covered by the present producing wells, in my opinion the field will ultimately recover in the neighborhood of 320,000,000 barrels. That includes past recovery. Approximately 60,000,000 barrels of oil has already been recovered. This leaves an ultimate recovery of at least 260,000,000 barrels of oil in the Oklahoma City field if the field is operated in the manner which I have stated. The ultimate recovery from the Oklahoma City field in event proration were lifted and the field operated without proration can only be estimated because there are no decline curves in the Oklahoma City field, but in my opinion that field would produce 75 per cent as much oil if we opened the field wide open to production today and continued in that manner, thus leaving some 80,000,000 barrels of oil underground which could be recovered if we continued to operate under proration to not exceed 250,000 to 300,000 barrels per day. With proration we will get 80,000,000 barrels more oil than without proration.

If the Champlin wells were operated at five times the capacity of the adjoining wells, an excessive utilization of gas energy would result after a period of time. This would injure the neighboring wells in so far as the ultimate recovery of oil through them is concerned. It would operate to take gas out of solution with the oil in the neighboring wells.

I have not made a detailed study of the decline curve in the Seminole area, but in my opinion the Seminole area had produced 70 per cent of its ultimate recovery. That area has now produced in the neighborhood of 500,000,000 barrels of oil, and in my opinion there is something like 200,000,000 left yet to recover in the Greater Seminole area in wells now drilled. This is the opinion of others with

whom I have talked. They agree with that total estimate. Seminole is what we call a settled pool and it is not any ways near as important to prorate Seminole as it is Okla- [fol. 516] homa City because the pressures have been pretty well dissipated, so if the Seminole pool were thrown wide open to production I do not believe it would make any ways near as much difference as it is in the Oklahoma City area. I would say, however, as much difference; it would only reduce that by 12½ per cent. I would say that the estimated ultimate recovery from now on from the Seminole area under proration is approximately 200,000,000 barrels. I would say also that from the Oklahoma City field from now on under proration the estimated ultimate recovery is approximately 260,000,000 barrels. The present allowable production under proration in the Seminole area is about 175,000 barrels a day. I believe that the Oklahoma City field averaged about 185,000 barrels per day during the month of June. The present allowable in the Oklahoma City field today is 10 per cent of one-third of the potential. It is more than 185,000 barrels per day under the order of the Commission effective the last four days. Until four days ago, it was about 185,000 barrels. If the Seminole area and the Oklahoma City field are both operated from now on at the present rate of allowable production, they will recover the remaining recoverable oil in approximately the same time. The allowable production in the Seminole area of 50 per cent in certain of the pools composing that area amounts to something like sixty barrels per well per day. The present allowable production per well per day in the Oklahoma City field is about 250 barrels per well.

In order to reduce the potential of the wells in the Oklahoma City pool to a basis corresponding to the potentials in the Seminole area, the Oklahoma City pool would have to be operated until we get the head off the pool. That would probably take a year, but if you wish some sort of a comparison much better than what we have now on a four-hour basis, I think the Oklahoma City pool should be [fol. 517] opened up, all wells simultaneously for 30 days, and on the 31st day I would estimate that the Oklahoma City pool from present producing wells would produce 750,000 barrels. With an allowable of 200,000 barrels, that would amount to a percentage of somewhere between 25

and 30 per cent. If you wish to compare percentages, Seminole and Oklahoma City, that in my opinion would be a comparison. It is impossible to conduct any such proceeding in the Oklahoma City field on account of the high pressure and the productivity of the wells when operated for a period of 30 days, because you would have no place to put the oil and then it would be a very wasteful procedure because you would pull in the water and waste a considerable volume of gas. In my opinion, the best conservation program for the Oklahoma City field, that is, the amount which the field should be allowed to produce per day from now on from the present wells, judging by our wells, I would say the Commission should not allow us to produce from that area more than 250,000 to 300,000 barrels per day. I am speaking from the conservation standpoint, from my work as an engineer on those sort of subjects. There is evidence in our Wilcox sand of the mud traveling between wells. This is evidence that the oil is being drained and that the underground area is getting sort of gaseous. The mud can travel easier when that condition occurs. It is more important to keep those wells pinched back so as not to waste that gas.

Cross-examination.

By Mr. Ramsey, of counsel for the plaintiff:

I am a geologist. I function as an engineer in the production department of the Skelly Oil Company. I know something about geology. I have not made a particular study of that science. Skelly Oil Company has 20 wells in the Oklahoma City field, of which it has charge of the operation. I think there is another well in which it is a [fol. 518] part owner, and I believe it has some royalty interests in the Oklahoma City field. In addition to that, the company is now drilling two wells. I advised the company to drill those two wells because if it did not drill the same its properties would be drained. Other wells are already in next to these two wells. I believe one of these other wells belongs in Phillips Petroleum Company. Phillips Petroleum Company is represented on the Oklahoma City Operators' Committee. I believe the other of these two wells belong to Anderson-Pritchard. They are repre-

sented in the Oklahoma City Operators' Committee. There are more than 800 wells in the Oklahoma City field. The territory covered by the Greater Seminole field is at least 15 to 20 miles one way and 8 or 10 miles in another. I judge that the Greater Seminole field is at least ten times bigger than the Oklahoma City field. There are about 10,000 acres in the Oklahoma City field under production. It is my business, my profession, to estimate the most economical way of obtaining the greatest recovery of crude oil out of the ground. I think it would have been more economical to drill 400 wells in the Oklahoma City field than to drill 800 therein, but I don't believe we would have recovered as much oil. It is a question of whether you are looking at the economic or ultimate recovery. The question of whether 400 wells would recover as much oil at a good deal less expense than all these 800 wells depends on the price of crude oil. This is because if you drill two wells on a property you will get more oil than you would out of one. It depends on how much money you can get out of the oil whether you drill two wells or one. I would drill just as many wells as they would give me money to drill with and would pinch them back in. The wells in the Oklahoma City field cost from $140,000 to $150,000 each to drill. The first thing for an operator [fol. 519] to do is to get his money back, but he don't want to if he is going to leave his money in the ground. No man will drill an oil well unless he thinks he will get his money back. But I think the Oklahoma City field as a whole will pay out and make money. I think that the Oklahoma City field will make 320,000,000 barrels if prorated. I would judge to prorate, so far as back pressure is concerned, that the Oklahoma City field will be down to pretty well past its bulk of production in three years. The wells in the Oklahoma City field range from 6,500 to nearly 7,000 feet in depth. When the wells in that field get down to a production of about 150 barrels a day I don't believe the operator could afford to pay the lifting charge to take the oil out of the ground if the wells are producing appreciable quantities of water. If the wells are pure oil wells, I believe that he can. When a well is pinched back, the oil is not going to fly away. You must take into consideration the fact that there is a water pressure below this oil

and gas, holding them in the oil and gas sand, so there is no way for that oil and gas to get out of that reservoir; it is still there. The best scientific knowledge believes that there can't be any such thing as an absolute complete recovery of the oil particles from the sand in which the oil is found. That is impossible under present methods. When you pinch these wells in, you are pinching the gas back. I said that when we pinched in one of our wells, the mud passed from one to the other. We created a lower pressure around our well and mud and gas and oil, all three, entered the well. I think the Oklahoma City field is now approaching the point where we should stop allowing it more oil, but under the Corporation Commission's orders they were pinched back about 6%. Under the Commission's way of figuring percentages, I believe 12 per cent might be the maximum point for a time until the per- [fol. 520] centages get down because the potential will go down. The potential must be determined by each well. You cannot apply the same pinched back pressure to each well in a uniform manner throughout the field, and the Commission's orders do not force us to do that. They allow a certain monthly allowance of oil and the operator can elect any method he thinks best and efficient to product that oil. My own company has different methods of operating throughout the month. We have some wells which it is better to open for two hours so far as efficiency is concerned. We have other wells which we pinch steadily throughout the month. I know the approximate location of the Morgan well in the Oklahoma City field. I do not know that that well produced 28,000 barrels. I do not know the details of the Classen well, an offset to the Morgan well. I am not familiar with the Slick well, an offset to the Morgan well. I do not know that when the Morgan well came in, three wells had been drilled adjoining it, neither of which had produced over 3,000 barrels, and I do not know that the Morgan well came in at 28,000 barrels, but that could very easily happen because there are three or four different sands. In our case, we have a 3000-barrel well offsetting a 42,000-barrel well. Water has been discovered in the Wilcox sand. This occurred in the Bert well of the Phillips Petroleum Company in Section 10. It is producing water. There are wells in the Wilcox sand

in the south end of the field which are making water. I have had experience in oil fields since 1919. I have never known of producers pinching in their wells and keeping them pinched in as a practice where there was a good price for the oil. I think the policy in the past has always been to produce them at maximum capacity. To illustrate what I mean by the coning, if you will consider a wooden basin with a drain in the bottom of it and you had some water in the basin, and pulled the plug out, the water would [fol. 521] come toward the bottom of the basin. If you will turn that upside down and imagine the water in the sand in that well and the vacated space in your wooden bowl is the water coming up, you will get an example of coning. I know of no method by which water encroachment can be wholly prevented. I know that you can retard it. I do not know of any way by which water can be sealed off from the oil sand. My method for retarding water encroachment is by pinching back the wells and producing efficiently. This holds the water back and gives the oil time to reach the hole before the water does. The water presses only a portion of the oil into the hole. The gas must move most of the oil. There are a lot of oil wells which produce a lot of water and that keeps it up for years. I am quite convinced that every sand in the Oklahoma City field has water beneath it. This water is already a menace in certain portions of the field. I think that the water would take charge of the oil and leave a lot of it in the ground if we opened up the field.

Redirect examination.

By Mr. German, of counsel for the defendants:

I know of no way of estimating how much oil a well will produce unless you actually measure how much it does produce when it is wide open. That necessitates a wide open flow for the purpose of taking the potential. This puts every producer upon the same basis. Oil and gas are migratory. The question of whether while your well is shut in the oil and gas will move from your area to somebody else's area depends on how much volume of oil and gas is taken out of the other wells. We must consider the fact that gas occupies space as well as oil. If you allow a well

with a big gas volume to produce, then it makes a lower pressure area around that well. This is evidence of the oil and gas migrating into this gaseous area. I know it to be a fact that when an oil well starts making water, if you pinch it back it makes pipe line oil. By pipe line oil I [fol. 522] mean oil that has no water in it. When oil has water in it you have to treat it in order to make pipe line oil. Oil that has no water in it when originally produced, is pipe line oil to start with. If you pinch back the well so as to avoid the production of water you can recover your oil without the water. This operates to hold the water down beneath the oil when you do that. That is the only conclusion you can come to if you produce water. If you pinch it back and you don't produce water you must have stopped the coning. If you should operate the oil well so as to produce water, the coning will take place, and underground waste would result because there is a certain amount of oil between this particular well and the one up slope that the lower well can recover, and the well up slope can't recover as it goes by, so you must take into consideration that your wells on the edge of the pool gradually go to water up slope.

Witness excused.

Thereupon both parties agreed that there should be filed as an exhibit in this case, the abstract and counter-abstract of evidence before the Corporation Commission at the October, 1930, hearing relative to the subject of waste, which abstract was prepared for the use of this court at the hearing in January, 1931, on the application for an interlocutory injunction, with the understanding, however, that same should constitute a statement of the evidence before the Commission upon the subject of waste on which it acted, but that the same should not be considered as primary evidence in this case. Said abstract and counter-abstract is incorporated as the second document in Volume 4 of Exhibits, which volume is entitled "Abstract of Defendants' Exhibits."

[fol. 523] E. F. GUIDINGER was thereupon called as a witness for the Defendants, and, after being first duly sworn, in substance, testified upon direct examination as follows:

Direct examination.

By Mr. German, of counsel for defendants:

I reside at Bartlesville, Oklahoma. I am the chief engineer for the Phillips Petroleum Company. I have been connected with oil companies since 1912, and with the Phillips Company for the last six years. I am a petroleum engineer, and that is my special line of work. I have been doing that particular line of work for the past six years with the exception of about one year acting as purchasing agent for the company. I have a degree in engineering, but not in petroleum engineering, from the University of Nebraska. I have made a special study of the Oklahoma City pool. Phillips Petroleum Company has 47 completed wells in the Oklahoma City field which it manages, and an interest in 24 additional wells in said field. The Phillips Company completed its first well in said field about July, 1930. The Phillips Company has seven wells offsetting eight wells belonging to the Champlin Refining Company in said field. If the Champlin wells should be operated at five times the percentage of their potential, while the wells of the Phillips Company were operated of their potential, there would be drainage from the area where the wells of the Phillips Company are located. There would also be a reduction in the pressure and gas energy at and about the wells of the Phillips Company. This would affect the Phillips' wells because the gas itself in the oil that is located under the Phillips wells would migrate towards the wells which are being produced at a much higher rate than the Phillips wells, carrying some oil with it to the other wells, and leaving oil under the Phillips wells which would not be left in condition to move finally to the Phillips wells. This is because of the fact that it would take gas energy away from the Phillips [fol. 524] wells. It would change the condition of the oil that was left under the Phillips wells, and besides the gas that was originally present in the oil under the Phillips wells would have moved off to the nearby wells. This would affect the recoverable oil at the Phillips wells. The effect would be that the Phillips wells would not produce naturally as long as they would otherwise. It means that the Phillips wells would have to be operated artificially sooner than they would otherwise. Besides, there would be

a certain amount of oil left in the reservoir than would normally otherwise move towards the Phillips wells. It would reduce the recovery from the Phillips wells by natural flow to some considerable extent. There is no way of determining the extent of the injury to the Phillips wells, that is, no way to calculate it exactly. I do not believe that it could be approximated with any particular certainty. I am sure there would be a great change in the amount of recoverable oil, but as to calculating it or even approximating it, I do not believe it is possible. We have cases in this country of drainage from drilling an offset well on which recovery is had. I understand that there is some rule set up whereby where a man on a lease fails to drill an offset well and breaches his implied covenant and suit follows for breach of that covenant, recovery is had on account of loss or drainage, but I am speaking from an engineering standpoint. I believe it is impossible to calculate. Where the reservoir conditions are the same there would be no difference in the Oklahoma City field from the ordinary case of drainage. You will have to use artificial means for producing oil from your wells much sooner than you otherwise would. The artificial means which I refer to would in all probability be the use first of the gas-air lift method. That is a method of making a well produce efficiently. That is accomplished by introducing gas into the well, putting the tubing into the well and introducing gas into the well and [fol. 525] thereby lifting the oil. There are other methods after the gas energy is diminished substantially or depleted by which you can draw the oil to the bottom of the hole. The gas lift method simply produces the oil that comes to the bottom of the hole without the aid of any artificial means. I think we can say certainly that the cost of producing oil with the gas lift method will run from 10¢ to 20¢ a barrel, depending on different wells, and depending on different stages in the life of the wells. This includes the cost of the gas lift equipment. In my opinion the operation of the Champlin wells in the way I have mentioned would result in underground waste. The reason for this is because I think generally it will leave quite a considerable amount of oil in the reservoir that can never be recovered, but that could be recovered under proper operating conditions. I think the best method to operate the wells in this field is to have the wells produce under a restricted rate of

flow under the same percentage of their potential capacity. I have an opinion as to how much oil ought to be produced from the Oklahoma City field, as to what the limitations, if any, on it should be from the present wells in order to accomplish the greatest ultimate recovery of oil from the pool. I believe that the maximum rate permitted under any condition should not be to exceed 250,000 to 300,000 barrels. The question of what per cent a well ought to be operated continuously to get the best results, depends on the well.

By Kennamer, J.:

"Q. What percent do you say a well ought to be operated continuously to get the best results?

A. That depends on the well.

Q. I am talking about a well say of three thousand or four thousand barrels per day, what per cent would you say that ought to be operated daily to get the best results?

A. Continuously for 24 hours per day?

Q. Yes, just regularly operated?

[fol. 526] A. It should be operated in my opinion at a rate to bring the oil to the top of the home with a minimum of gas.

Q. What per cent of the potential production to give the best results in the interests of conservation?

A. Taking into account all factors?

Q. You say you are familiar with the Oklahoma City field. Let's just apply it to the conditions as you know them down there?

A. Well, I think there is a range of percentage through which a field could be produced.

Q. I am wanting your best judgment as to the best per cent in the interest of conservation without underground or physical waste?

A. Well, I think a very low rate in the interests of conservation.

Q. What rate do you say?

A. Tow or three per cent."

If proration were lifted in the Oklahoma City field there would be a large waste, a large immediate waste, and a large underground waste, in my opinion. I think the difference between the ultimate recovery in the one case and

the other might be from 25 to 35 per cent less under wide open conditions than under pinched conditions.

Cross-examination.

By Mr. Glasser, of counsel for plaintiff:

I have never known of any operator in any field anywhere prior to proration in Oklahoma operating his wells on 2 or 3 per cent of its production. I do not give any consideration to the market demand and the price of oil in making that answer. The answer that I gave Judge Kennamer is predicated entirely on conservation. The factor on which I predicated my answer was conversation. By conservation I mean the prevention of the waste of two things. I mean the prevention of the waste of oil and the waste of gas. I assume that the waste in oil will occur that always occurs in a flush field that operates without restraint. I assume that gas waste is going to occur, and is [fol. 527] always going to occur in flush fields without restraint. The waste that would occur at ten per cent reduction as against two per cent relatively speaking, would be considerably greater. It would not be as great as wide open. Under fifty per cent reduction, the waste would be very much greater; as great as wide open probably. It is my opinion that the greatest volume of oil could be recovered in the Oklahoma City field operating the well on two or three per cent of their potential, assuming that the potentials as they are at present. As the potentials change your percentages may well change. There is nothing wrong with the potentials as they are at present. They are all right. There is no factor in that. There is a change in the reservoir as you produce from it. What might be an efficient condition now might not be an efficient condition later on. In my opinion the Wilcox sand wells in the Oklahoma City field can be operated as efficiently at two to three per cent of the potential as under any other rate. In my opinion, the operation of these wells at two to three per cent of the potential will recover the greatest volume of oil. I predicate this experience in this field already and on our experience in the Seminole field. No other field has ever been produced on that low a rate and we have no pre-

vious experience in the industry. Our rate in the Oklahoma City field is two per cent a day. The waste in the Oklahoma City field warrants that because under our experience in the Oklahoma City field we found while we are allowed what amounts to two per cent of the potentials of a well per day for thirty days, we can produce that oil at a rate which gives us the greatest efficiency for that particular well. We have our own experience that warrants that conclusion. This experience is that while a well has a gas-oil ratio of 1100, we can bring it down to 500 under pinched conditions. As to how low the percentage should be to most efficiently operate, it may be at the point which brings about the most efficient operation. In some cases it [fol. 528] may be two and in some cases higher. In my opinion the lowest efficient gas-oil ratio in any sand is the lowest ratio. In some cases we have found it be around 500 cu. ft. per barrel. This is a good minimum on the wells we worked on. It might not be on other wells. I think it is a good minimum on the wells I know about. I have heard of lower minimums on other wells, but I do not know about that. In my opinion the most efficient, lowest minimum in the Oklahoma City field of which I have personal knowledge is 450. I don't know as I am able to say how high you can go before you get out of line and are commencing waste. In my opinion four or five thousand cubic feet per barrel wouldn't be extremely wasteful. If you produce a well at two or three per cent you are able to produce it under its best gas-oil ratio, and you will also give the reservoir a chance to let the water follow the oil up and get the most efficient extraction of oil from the reservoir. In my opinion, the well should be operated at the lowest gas-oil ratio. There is no difference in operating a well on a gas-oil ratio up to a great per cent of its possible production and still maintain that ratio, not so far as that well is concerned. There wouldn't be any loss except that you would be taking more oil out of that well than out of the surrounding wells. If you maintain a proper gas-oil ratio, the percentage might come up to different amounts; I can't say. I heard Mr. Arnold testify that it ranged from 33 per cent to 66. I think he is in error in that. I would cut his estimate down one-third to one-half of what he said, if you maintain your gas-oil ratio. I know of things which prevent you from maintaining a

proper gas-oil ratio. You have to maintain the proper flowing rate in order to get the proper ratio. It is not a mere matter of mechanics to change the rate of flowing. The manner in which the casing is set and the manner in which the tubing is inserted has something to do with that. It is possible to lower the gas-oil ratio considerably if [fol. 529] everything is done in a proper manner. In so far as actual production is concerned you can control gas-oil ratio with the proper sort of engineering practice. I am fairly familiar with the Morgan well in the Oklahoma City field. I have been in the oil business since 1912. I know that oftentimes a good well is produced which is offset on four sides by dry holes. I have seen that happen. I also know that dry holes are sometimes offset with good wells. These facts would not in any wise alter my opinion that the Champlin wells might seriously affect the Phillips Company's wells, because we do not have those conditions in the Oklahoma City field, that is, not that I know of except near the edge of the field. In saying that these things do not happen in this field, I mean that where our sand is present our production is fairly regular. As a rule we do not have a low production well in the Oklahoma City field in the same sand as an offset well with great production.

"Q. Well, what about the sands of the wells illustrated on the chart?

A. You are talking about the Morgan well, 28,000 barrels?

Q. Do you remember which of these wells came in first?

A. No, sir.

Q. Assuming that the Classen well on the tract marked B came first.

A. Yes, sir.

Q. At three thousand barrels. Now referring to the Slick well down in the block marked No. 10.

A. Yes, sir.

Q. And then the well immediately east marked No. 3.

A. Yes, sir.

Q. Now assuming those three wells came in, the Classen well came in at 3,000 barrels; the Slick well at five, and the well east of the Slick at 2500; and some five months elapsed, and then the Morgan well drilled as an offset well to the

Classen that came in, 250 feet away, came in at 28,000 barrels. What do you say about that?

[fol. 530] A. Because it is 250 feet away on top of the ground—there is no telling where the bottom of the Morgan well is. The Morgan is probably producing in the Wilcox sand some distance west of the top of the hole.

Q. Assuming both wells are in the same sand and the beds dip to the west what would you say, how do you account for the fact that a well 250 feet away makes five times as much oil?

A. I couldn't account for that in Oklahoma City if they are in the same sand.

Q. Nine times as much oil.

A. I am frank to tell you I don't believe they are.

Q. Concern yourself with the supposition that they are in the same sand. Now if they are in the same sand and if they are about 250 feet apart, how do you account for that situation in the Oklahoma City field under your testimony?

A. I couldn't account for it.

Q. It couldn't be true if they are in the same sand.

A. It is true with this exception. Of course, the Morgan has not taken any official potential, and this figure of 28,000 barrels is more or less speculative. I know it is a good well.

Q. It is a better well than the Classen?

A. Yes, sir.

Q. How do you account for the fact it is so much better well only 250 feet away?

A. I have told you I am sure the Morgan well is not producing from the same sand as the other well. It couldn't make that amount of production in the same sand.

Q. If the two wells are in the same sand, if they are producing from the same zone, there isn't any way to account for what happened on the basis of your testimony is there?

A. That is true."

Redirect examination.

By Mr. German, of counsel for defendants:

If the Morgan well and the Classen well are in the same sand and if they are producing from the same zone, that is a very unusual occurrence. I do not believe we have ever

[fol. 531] had this percentage, ratable-taking method, enforced by the Corporation Commission in Oklahoma prior to the time when present series of orders was commenced in the Seminole pool. It is a fact, although, some operators in any pool and even a majority of them, might desire to operate their wells on a low percentage of potential production, that in the absence of state control to compel all of them to do it, that some operators just won't do such a thing unless forced to do so, and this compels all the balance to open at a wider rate. There are other factors which enter into the determination of the most efficient gas-oil ratio than merely the amount of oil and gas that comes out of the well. The size of the casing and the conditions of operations on top of the hole for a certain sized conductor string, a certain sized johnny brings about the best results. As to conditions down in the formation such as nearness or distance to water and position of the well on the structure, the well lower down on structure is generally more deficient in gas; less gas is present than in a well higher up. The nearer to the water contact, the less gas per barrel usually present. There are some wells in the Oklahoma City field that have no variation or practically no variation in oil-gas ratio whether operated wide open or pinched in. As a rule every well is a problem of its own.

Recross-examination.

By Mr. Glasser, of counsel for plaintiff:

The potential of the Morgan well was speculative the last I heard of it. If there has been an official potential taken, I don't know about it. All the potentials, as they are being taken, are not speculative. There is a member of my company on the Operators' Committee in the Oklahoma City area. I am the man. Any adjustments given to any operator in the Oklahoma City field have to be brought be-[fol. 532] fore the Committee. It is discussed before the Committee and a vote is taken on it. I have one of those votes. Mr. Stokes of the Slick interests is Chairman. Mr. Briggs of the Coline, Mr. Wirt Franklin. This is the Oklahoma City Operators' Committee, handling matters of proration or rather advising in them. The other committee testified about was a committee of the Oklahoma City Producers Association. Mr. J. K. Schafer is a member of the

Oklahoma City Producers' Committee. There are two more members. I don't remember them right now. As I understand it, the Oklahoma City Operators' Committtee under some proration order was to be selected by the producers in open meeting to handle the affairs of the Umpire's office, or rather to advise with the Umpire on special cases. We do not tell the Umpire what to do. He knows what to do, but any special case that is brought to him he brings before the Committee. He has to have our okay on special cases. We did not okay this two per cent production. We did not recommend it to the Commission. That is decided on open hearing before the Corporation Commission. We do not furnish the witnesses the evidence to show that is the best conservation proposition to the Corporation Commission. The testimony before the Corporation Commission is to determine the market outlet as I understand and to allocate. It is their business to find out what the market is. This committee considers these special cases and makes recommendations to the Umpire. It is my understanding that this committee is appointed by the Corporation Commission to act in an advisory capacity.

Opinions differ as to the best practice as to size of casing that should be set on a sand. The best practice in the industry is 7" casing. My company is setting seven-inch casing on most wells. We are setting some nine and five-eighths-inch too. We are not getting a hundred thousand [fol. 533] barrels doing it. We have not got a hundred thousand barrels yet. We have what we believe to be the biggest well in the field, in the well in which we set nine and five-eighths-inch casing. We have in the past developed a special motor driven centrifugal pump which is run to the bottom of the oil well with an electric cable clamp along-side the tubing. Those pumps increase in their efficiency as the diameter in the propeller increases, and we set large sized casing to be able to run as large sized pump as possible. This pump will not work nearly as efficiently in a seven-inch casing.

Witness excused.

H. M. STALCUP, being called as a witness for the Defendants, after being first duly sworn, in substance testified as follows:

Direct examination.

By Mr. German, of counsel for defendants:

I was on the stand before. I am the vice-president in charge of production for the Skelly Oil Company. The percentage of allowable production in the Yates pool in Texas is 1.3%. In the Hobbs pool in New Mexico it is approximately 3%. I forget the exact decimal. The potential in the Hobbs pool is about 1,325,000 barrels with a 37,000-barrel a day outlet. The potential in the Yates pool in Texas is 5,496,000 barrels with 70,000 barrels a day outlet. Skelly Oil Company has production in both the Yates and the Hobbs pools. In barrels of oil produced per day the Oklahoma City field is not exceeded by any pool in the United States. It produces in barrels of oil per day more than any other single pool in the United States. At the [fol. 534] present time the East Texas field as a field is composed of several pools. The East Texas field as a whole, produces approximately three hundred twenty odd thousand barrels of oil a day. There are three pools in the East Texas field.

Cross-examination.

By Mr. Glasser, of counsel for plaintiff:

The information respecting the number of pools in the East Texas field is carried as I have given it in the Oil and Gas Journal; the Bureau of Mines compilations and the American Petroleum Institute compilations. The Oil and Gas Journal carries the East Texas field under three separate pools. It is carried as Kilgore, Lathrop and Joyner. It is generally conceded to be one entire field divided into three pools at the moment. I could not tell you the percentage in the East Texas field. That is not where most of the oil in Texas is at the present time. The Yates field in Texas probably has ten times as much as the East Texas field. What I understand is meant by the East Texas field is the area that is considered as proven for production in

some three counties, approximately 100,000 acres. It is my information that the area of the East Texas field approximates 100,000 acres. Different estimates vary from 90 to 120 thousand acres. I do not think that the Yates estimated reserve is ten times as much as the East Texas area. I am talking about present production. I am not talking about estimated ultimate recovery, but present producing wells. My understanding of the present production in the East Texas field daily is some seven or eight hundred thousand barrels a day potential. Its production is 325,000 barrels a day. I did not say that Yates is ten times that much. I said that Yates had a potential capacity approximately ten [fol. 535] times that of the East Texas field. Something like 700,000 barrels will cover the estimated production of the East Texas field of the wells now completed. Of the wells now completed in the Yates pool, the gauge potential is five and one-half million. The figures in actual production for Yates is 70,000 barrels a day, and for East Texas about 320,000 barrels a day. The Yates field is on proration, and has been for four years. It is voluntary proration. Hobbs is also voluntary proration. The Yates field is under the orders of the Railroad Commission of Texas, but proration was originally entered into in that field under a voluntary arrangement. The Hobbs field in New Mexico was a voluntary arrangement between the state and the operators approved by the state. I am personally acquainted with the Yates pool. There is water showing up in quite a few wells around the outer fringes of that pool. The water is not getting up. It would if they would increase the rate of production from the field very much. I do not think that the Yates pool is being produced now at capacity. I know it isn't. I think if they continue to operate that pool as it has been for the last four years it will probably excel in the recovery of oil that has ever been had to date in percentage of possible recovery. As to the best the Yates field could possibly do without any proration and wide open, that would depend on how many days you mean wide open. A structure badly underlaid with water like that is, you could not leave it wide open very long without producing a lot of water. I do not know what the Yates pool would produce if the proration were removed and it was allowed to produce the most it could produce. There is something like 14,000 acres in the Yates pool. The pool

is owned by some seventeen operators. They are: the Mid-Kansas, a subsidiary of the Ohio Oil Company; the Continental Oil Company; the California company, subsidiary to the Standard of California; the Simms Oil Company; the Stanolind-Continental; Humble Oil & Refining Company; Shell Petroleum Company; Stanolind Oil & Gas Company; the Savoy Oil Company; Kirby-Elson Oil Com- [fol. 536] pany; Phillips Petroleum Company; Kirby Petroleum Company; Crosby and others; Graburg Oil Company, Plymouth Oil Company; and Skelly Oil Company. The Yates pool is prorated by mutual consent of the operators under orders of the Railroad Commission of Texas. The operators in that field got the Railroad Commission to make that order.

Witness excused.

HOMER H. CHARLES, thereupon called as a witness for the Defendants and after being first duly sworn, testified in substance as follows:

Direct examination.

By Mr. Miley, of counsel for defendants:

My name is Homer H. Charles. I live in Bartlesville, Oklahoma. I am a geologist by profession. I attended the University of Kansas for five years and received the degrees of Bachelor of Science and Master of Science. I have practiced my profession for eight years. I am connected with the Indian Territory Illuminating Oil Company. I have worked at my profession in the Oklahoma City Field. I am acquainted with the Champlin McCalep Well No. 1, located in Roosevelt Place Addition to the City of Oklahoma City, Oklahoma. I know the sand that well is producing from. I am able to compute the amount of oil any place in a given oil and gas sand with certain known factors. I have computed the amount of oil and gas in the vicinity of the Champlin McCalep Well No. 1. I estimate the recoverable oil as approximately 33,000 barrels per acre. I have made a similar computation with reference to the Champlin Naden Well No. 1. I estimate it to be 27,000 barrels per acre. I have made a similar computation with reference to

the Seal lease in Compton Park. From No. 1 on the Seal lease, I estimate the recovery to be approximately 13,000 barrels per acre. From No. 2 on said lease approximately 7,500 barrels per acre. This is based on a study of the sands in those wells. I would not say that every well would be the same.

[fol. 537] Cross-examination.

By Mr. Glasser, of counsel for plaintiff:

In case of a dry hole, you might get a 33,000-barrel well on one acre, and no oil on an adjoining acre. I am somewhat familiar with the area around the Morgan well.

The witness being handed a chart by counsel for Plaintiff, testified further on cross-examination:

According to our records (meaning geological records) the Classen well (shown on the chart) did not get any Wilcox sand. We use these geological records for all of our determinations. I presume that the Plains Petroleum Company well in block 7, Alexander Block (shown on the chart) came in in the Wilcox sand. The wells right across the street came in also in the Wilcox sand. The No. 4 well in block 6 and the Plains Petroleum Company well in block 7, just across the street from each other, one having come in as a 60,000 barrel well and the other as a 40,000 barrel well are both in the same sand, and I can give you another example. * * * (Witness was interrupted at this point by counsel for Plaintiff who stated that he did not care about another example.)

Resuming his testimony upon cross-examination, the witness further testified:

As to the ultimate recovery of these two wells (meaning the No. 4 in block 6 and the Plains Petroleum Company well in block 7) I should judge that the Plains well would not recover as much oil by a considerable amount as the No. 4 well in block 6. If you only got 33,000 barrels to the acre in one day out of the one that came in at 40,000 (meaning the Plains Petroleum Company well) you would not get that much out of the other well (meaning the No. 4 well in block 6). It depends altogether on the sand conditions—on the way the well is operated. If both wells were operated iden-

tically, one with just as good practice as the other, there would be a variation in the recovery. I should say that the average computations the geologists and petroleum engi- [fol. 538] neers make on a per-acre basis are often quite close to the ultimate records. The figures which I gave as to the amount of recoverable oil from these respective wells is based upon the thickness of the sand and the porosity at the particular place of these wells, and these figures are not meant to reflect a general average of the sand over the whole field.

Witness excused.

D. B. Dow was thereupon called as a witness for the Defendants and, being first duly sworn, testified in substance as follows:

Direct examination.

By Mr. Miley, of counsel for defendants:

My name is D. B. Dow. I live in Bartlesville, Oklahoma. I am a petroleum engineer. I am a graduate of the University of Nebraska with a Master of Science degree. I have practiced my profession about 13 years. I am connected with the Indian Territory Illuminating Oil Company. I am familiar with the Oklahoma City field. I have made a study with reference to the casinghead gas situation in the Oklahoma City field. My study has continued since the field was discovered. Casinghead gas is gas that is produced from an oil well together with the oil. The casinghead gas from the Oklahoma City field has a commercial or useful value, for the manufacture of gasoline and the use of the residue gas as fuel. The casinghead gas is utilized for the manufacture of gasoline by passing it through a gasoline plant where the gasoline vapors carried by casinghead gas are extracted from the gas. These plants are expensive. In the Oklahoma City field there is now being produced approximately 437,000,000 feet of casinghead gas per day, approximately all of which is taken by the gasoline plants. I know the casinghead gasoline plants in the field. I know the capacity of these plants approximately. The oil wells in the Oklahoma City field are not operated continuously at a uniform rate. There are

[fol. 539] times when there is a greater production of casinghead gas than there is at other times during the day. That is true also during the month. The present casinghead gas plants in the Oklahoma City field are capable of taking care of the peak load of gas that is now being produced in that field, substantially. Practically all of the gas in the Oklahoma City field is now being utilized for the manufacture of gasoline. The content of the gas per M. cu. ft. is approximately one-half gallon per thousand cubic feet. I know how many gallons of gasoline are manufactured in the course of 24 hours. On the basis of 437,000,000 feet, that would amount to 218,000 gallons. That has commercial value. The selling price is approximately one and one-half cent per gallon at the present time. The other product from the gasoline plants is residue gas. That is the residue gas or gas remnant. That is useful and is used for fuel for domestic consumption. The gas companies buy that gas in the Oklahoma City field. The requirements for residue gas vary with the period of the year. In the winter time more gas is taken and in the summer time less, but on a yearly average approximately a hundred million feet a day is taken. I would say that the value of that gas is six cents a thousand. I have made a calculation to estimate the amount of casinghead gas that would be produced the first day if the present restricted production in Oklahoma City were lifted and the field permitted to produce to its limit. It would be 7,500,000,000 cubic feet. The gasoline plants are not able to take care of that much. This would decline as time went on. I have calculated how much would be produced in a year. I calculate that 3,300,000 gallons of gasoline would be wasted with the gas that could not be handled in the gasoline plants the first day. That is the amount which the present plants would not be able to take care of. It would be difficult to estimate how much gas would be produced at the end of the year, the last day of the year, but I [fol. 540] would assume approximately the same amount of gas would be produced at the end of a year and under present operation approximately the same as we are producing now under present proration. There is no likelihood of additional plants being erected to take care of the excess amount that would be produced if the present proration should be lifted and an unrestricted amount of oil could be produced. The present price of gasoline certainly would

not encourage anyone to build plants in the first place, and in the second place, if he should build a plant, the plant would necessarily have to be paid for in the first year's operation because at the end of the year that plant would not be needed; any additional plants would not be needed. That is not practicable under the existing prices of gasoline and the cost of gas. I did not say that at the end of the year there would be as much production of gas under an unrestricted condition as there would be the first day proration was lifted. I meant to say that at the end of the year, the production of casinghead gas and gasoline would be practically the same as it is right now under proration, assuming that this year there was no proration throughout this year. During the first year I have calculated that 248,500,000,000 cubic feet of gas would be wasted at the wells in the field that could not be utilized by the plants. 123,250,000 gallons of gasoline could be recovered from that gas if it was properly utilized. The value of that gasoline, at present prices, would be $1,848,750.00. I have not made a calculation as to the value of the residue gas alone. I have a total figure, including the gas wasted at the discharge of the plants, together with the gas wasted in the field, at six and one-half cents a thousand, amounting to $29,400,000.00. The total value of gas and gasoline wasted during the year would be $29,400,000.00. There are nine gasoline plants in the Oklahoma City field at the present time. We know that under our present operating condition they can handle prac-
[fol. 541] tically all the casinghead gas produced. If the field would be wide open and gas delivered at a little more uniform rate than at the present time they would naturally handle more gas. If there is any material increase in the amount of gas from the casinghead gas from the field, these plants would be unable to take care of it and that would be waste. These plants are not running twenty-four hours a day and thirty days a month. They operate about 50% of the time.

Cross-examination.

By Mr. Glasser, of counsel for plaintiff:

I think my calculations are probably a little low. The producer is paid a fraction of a cent per thousand cubic feet for the gas with the gasoline in it.

Witness excused.

Thereupon Mr. Miley, of Counsel for the Defendants, offers in evidence Defendants' Exhibits X, Y and Z, being the tabulation of gauges of potentials of wells in the Oklahoma City field for January and April under the Commission's Orders; Exhibit X being the potentials as calculated by the multiplication of the four hour gauge by the figure 6, Exhibit Y being the summary of that total showing by Companies, and Exhibit Z being the list of wells which have not taken any potential either for January or April; that the Plaintiff objects to the introduction of the document for the reason that the same is incompetent, irrelevant and immaterial, which objection is overruled, to which the Plaintiff is granted an exception; that thereupon, the Plaintiff offers a document which is identified as Plaintiff's Exhibit No. 43, being a statement of the April overs and unders for the Oklahoma City field, which document is offered in evidence in complement of the Exhibits X, Y and Z offered by the Defendants, to which the Defendants object as incompetent, irrelevant and immaterial, which objection [fol. 542] is overruled, to which the Defendants are granted an exception.

The Defendants rest.

R. L. Clifton, recalled by the Plaintiff in rebuttal, in substance testified as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That a paper which has been marked as Plaintiff's Exhibit No. 42, is identified as a plat showing a portion of the Northwest Quarter (NW¼) of Section Two (2), Township Eleven (11), North, Range Three (3) West, in Oklahoma County, Oklahoma; that it accurately sets forth that which it purports to reveal, and was prepared by the witness with the assistance of draftsmen in his office; that said plat purports to show the area in and around Morgan Petroleum Company Stout Well No. 1;

That Slick Classen Well No. 1, in Block B, the Morgan Petroleum Company Stout Well No. 1, the Slick Daugherty Well No. 1 in Block 10, and the Plains Petroleum Well No. 1 (Alexander) in Block 7, indicated upon the chart,

are all drilled into and producing from the identical sand; that the witness saw samples of the sand, watched the drilling of the wells, and is able to identify these samples as belonging to certain beds in the Simpson formation;

That Plaintiff's Exhibit No. 42 was offered in evidence as a part of the direct examination of this witness in re-
[fol. 543] buttal, without objection upon the part of Defendants;

Cross-examination.

By Mr. German, of counsel for the defendants:

That the witness felt sure that the samples which he had examined had been taken from the wells indicated upon the chart; that the Wilcox sand was penetrated in the Morgan Stout Well No. 1; the Slick Classen No. 1, the Slick Daugherty No. 1, the Slick Danreuther No. 3, and Plains Petroleum Alexander No. 1; that all of said wells were in the basal portion of the Wilcox, and all drilled into the School Land sand below the Wilcox; that all of the wells were cased in the top of the Simpson; that the Wilcox is an upper member of the Simpson formation; that the witness would not say that all of the above described wells are cased on top of the formation into which they were drilled and from which they produce oil; because having been drilled through some Pennsylvania beds that must have carried more oil than gas;

That the Morgan Stout Well No. 1 ran wild for four days, i. e., with an uncontrollable flow into the open air; but the other wells did not run wild; that there is a theory that when a well so flows channels are set up in the sand immediately adjacent thereto; with this theory, however, the witness does not agree;

That such flow in a well beyond control, as against its offset well that is within control, does not necessarily result in any material ultimate difference in the behavior of such wells; and in support of the witness's theory, the Slick Daugherty Well No. 1 to the south of the Morgan Stout Well No. 1, was cited for the purpose of showing that the original potential of that well, of 175 barrels per hour, had increased to something like 20,000 barrels per day, notwithstanding such well had never been out of control; that some work had been done on this well, but that the witness

was not sure as to whether it had been killed and then re-conditioned;

Witness excused.

[fol. 544] CHARLES C. PEPPERS, thereupon called as a witness in rebuttal by the Plaintiff, being duly sworn, testified in substance as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That he lives at Enid, Oklahoma; is a manufacturer of natural gasoline; engaged in the business for fifteen years; that gas is being very unevenly produced in the Oklahoma City field and that at times the production of casinghead gas is 25 to 30 per cent. more than the capacity of the plants in the field; that at other times there is barely sufficient gas to operate a plant upon the smallest possible ratio to which the plant can be reduced; that in the daytime nearly all of the operators produce their wells; that the intermittent production of such wells results in a waste of gas which could be remedied by a uniform system of operation, which would produce an even amount of gas over a 24 hour period; that if a proper gas-oil ratio was maintained in the production of said wells, all of the gas so produced in the Oklahoma City field would, as far as practicable, be properly utilized for the manufacture of natural gasoline; that it has never been the custom in the industry for the manufacturers of natural gasoline or for the producers who build their own plant to put in plants up to maximum capacity equal to the total volume of gas produced, for the reason that flush production produces a volume of gas which is not sustained and does not warrant the construction of manufacturing plants equivalent thereto; that the industry would find a way of taking care of and manufacturing the casinghead gas produced in any field if produced upon a proper ratio with the volume of oil taken therefrom; that when asked whether the witness had ever heard of any field in the United States where the industry allowed casinghead gas to be wasted as the young man from Bartlesville had computed; the witness stated that those figures are so unreasonably fictitious that the witness could not conceive of them.

[fol. 545] Cross-examination.

By Mr. Miley, of counsel for defendants:

That the witness did not know about the operations in the Panhandle of Texas; that Counsel asked the witness if "unrestricted operation" in the field had not resulted in the waste of many millions of cubic feet of gas because casinghead plants were not available for the utilizing thereof during the flush production period, to which objection was made by Mr. McKeever, of Counsel for the Plaintiff, to the effect that the statement was a mere statement for the purpose of assuming a fact not proven and prejudicial; that the witness answered that such had happened in every field in the United States which has been operated without restriction, and that that same loss is now happening in Oklahoma City under restricted flow; that in his opinion this loss or waste would not be increased by unrestricted flow, in that the manufacturers at this time have no means of basing assurance of production from day to day and cannot know whether the production will be in the ratio of 60 per cent. of their capacity or be but 10 per cent. thereof; that the witness has gone through the Oklahoma City field many times and without exception every plant in the field is wasting residue gas at the plant and that gas is "popping off" in every section of the field, except in the lime area where the gas is practically dissipated; that the witness was not familiar with the production of the Champlin Naden well since June 23rd; that a company cannot install large equipment for flush casinghead gas production; that the present capacity of the plants in the Oklahoma City field is such that a much greater volume of casinghead gas than is being handled could be handled if more equally distributed over a 24 hour period; that Counsel for the Defendants asked the witness if it was not dangerous to operate large wells in the Oklahoma City field at night, and the witness thought there was a lot of "bugger boo" in that situation; Counsel thought that such situation was more the result of caution, to which the witness replied: "Run-
[fol. 546] ning under the guise of caution"; that Counsel thereupon suggested that there were many operators who did not care to take the risk of operating wells at night on

account of the danger of running wild, to which the witness replied that but three wells had gotten beyond control out of 800, which was not a very high percentage; that the witness thought the idea of operating in daytime to avoid danger, was ridiculous, and Counsel again reminded the witness that other men thought that was "proper caution", to which the witness replied:

"There have been many fictitious statements built up in this country."

Witness excused.

RAY M. COLLINS, recalled by the Plaintiff in rebuttal, *and* testified, in substance, as follows:

Direct examination.

By Mr. Glasser, of counsel for plaintiff:

That the witness has heard that the Phillips Petroleum Company has installed 9⅝ inch casing in some of its wells in the Oklahoma City field; that the witness was thereupon asked if he had had a conversation with Mr. McKeever in the corridor of the Court House, about the matter, and stated he believed he had, and that the substance of such conversation was that the Phillips Company had installed such casing to get the ultimate production.

Witness excused.

That thereafter, on the 3rd day of August, 1931, the cause coming on for argument and final submission, Mr. German of Counsel for defendants, called the Court's attention to the fact that Mr. Ramsey of Counsel for the Plaintiff, and himself, had agreed that any orders of the Corporation Commission might be introduced in evidence, and thereupon Mr. German introduced in evidence, with the permission of the Court, as Defendants' Exhibits "A", "B", "C" and "D", copies of Corporation Commission orders numbered [fol. 547] 829, 878 and 920, and a letter dated June 10, 1915, addressed to A. L. Walker by the Commission, signed by W. L. Humphrey, Commissioner.

And thereupon, the Plaintiff asked to have the case reopened and to be permitted to offer in evidence a document to be marked "Plaintiff's Exhibit No. 44", same being a photostat of an original Report and Recommendations of Operating Committee, appointed February 25, 1931, In Re Gas Conservation and Water Intrusion, Oklahoma City field, addressed under the date of March 11, 1931, to Wirt Franklin, Chairman, Oklahoma City Operators, Oklahoma City, Oklahoma; to which the Defendants objected on the ground that the document is incompetent, irrelevant and immaterial and that reopening of the case would involve, assuming the document to be competent, the necessity of the Defendants introducing some proof with reference to it, and Counsel for Defendants stated that said document had never been presented to the Commission, but was a matter of intercommunication between producers in the Oklahoma City field; whereupon, Counsel for Plaintiff stated that evidence in an ancillary hearing in the case, showed that the matter covered by said document went to the Operators' Committee and was there rejected; that neither of Counsel for the Plaintiff knew of said document at the time this cause was tried on the main issue; that after argument during the course of which Plaintiff proposed to prove the signatures on said instrument by E. F. Guidinger, one of the signers, the Court declined to permit such proof to be made, and sustained the objection to the introduction of said instrument, and to all of the rulings of the Court in this connection, the plaintiff was allowed exceptions thereto.

Thereupon the cause is argued to the Court.

During the argument by Ex-Attorney General Charles West, Special Counsel for the Governor of the State of Oklahoma in this case, Judge Kennamer referring to a brief Mr. West had filed in this case, said to Mr. West:

"I get the impression you thought the law was being administered under monopoly at this time. This is what I want to find out."

[fol. 548] To which Mr. West replied: "You get the right idea."

Thereupon Judge Kennamer again addressed Mr. West as follows: "That is right, is it?" To which Mr. West replied:

"I think the administration of this law by the Umpires appointed by the oil companies is iniquitous, and we have asked them to change it, and if they don't change, I think they will be compelled to."

Judge Kennamer: "That is a very important matter."

To which Mr. West replied:

"I think it is, but it does not destroy the law."

Counsel for the defendants objected to the inclusion of the foregoing statements of General West upon the ground that his first statement and the first part of his second statement are mere expressions of his opinion which is not concurred in by the defendants or their counsel and that the second part of his second statement is outside the issues and beyond the evidence in the case. The court denies said objections and includes said statements of General West herein because of a reference which was made thereto by Judge Kennamer in his dissenting opinion.

(Clerk's Note.—Exhibits to Statement of evidence not embodied here for reason same printed as separate Volume of Exhibits, in 4 parts.)

[fol. 549] In the United States District Court

[Title omitted]

Stipulation in re Statement of Record

Solicitors for the Plaintiff and the Defendants hereby agree that the foregoing is a correct narrative statement of the evidence together with all Exhibits pertinent to the issues on appeal to the Supreme Court of the United States which was received upon the final hearing of the above entitled cause.

Dated this the 10th day of October, 1931.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar A. De Meules, Attorneys for the Plaintiff. J. Berry King, Attorney General of Oklahoma; Jess A. Ballard, Ass't Att'y Gen'l; John H. Miley, E. S. Ratliff, St. P. Z. German, Attorneys for Defendant Corporation Commission and the Individual Members Thereof and for Defendants J. Berry King, as Attorney General, and Lewis R. Morris, as County Attorney.

[fol. 550] IN UNITED STATES DISTRICT COURT

[Title omitted]

CERTIFICATE OF NARRATIVE STATEMENT

The foregoing narrative statement of the evidence is hereby allowed and approved, and where therein the testimony of any witness is reproduced in the exact words of the witness, and where therein the Exhibits are set forth in full, it was so desired by the parties, and the Court hereby directs that it be so done; and the same is hereby ordered filed as a statement of all of the evidence taken in the above entitled cause and to be included in the record on appeal in the above entitled cause as provided in paragraph (b) of Equity Rule 75.

Dated this the 15th day of October, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 551] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER STAYING ENFORCEMENT—Filed June 13, 1931

This cause coming on to be heard on this 13th day of June, 1931, upon the application of the plaintiff for an order staying the enforcement against the plaintiff of the proration orders of the Corporation Commission of Oklahoma in the Oklahoma City field pending the appeal from the order of February 9th, 1931, denying an application for a temporary injunction in this cause, the parties appearing by their attorneys of record, and the matter having been submitted upon the amended and supplemental bill of complaint filed herein on May 29th, 1931, the affidavits introduced by the respective parties hereto, and the arguments of counsel, and the court being fully advised in the premises, finds that the plaintiff will suffer irreparable loss and injury unless such stay be granted, and that such stay should be granted on condition that the plaintiff shall not take from the Okla-

homa City field, until the further order of this court, in excess of ten thousand barrels of crude oil per day, and give a good and sufficient bond in the sum of $200,000, as hereinafter provided.

[fol. 552] Now, therefore, it is ordered and adjudged until the further order of this court, that the defendants, Paul Walker, E. R. Hughes and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and all persons acting by or under them be and they are hereby enjoined from instituting any proceedings against the plaintiff under the provisions of Sections 3498, 3499 and 7959, Compiled Oklahoma Statutes 1921, on account of alleged violations of said proration order or orders; that the defendant, Lewis R. Morris, individually and as county attorney of Oklahoma County, Oklahoma, and J. Berry King, individually and as Attorney General of the State of Oklahoma, and all persons acting by, through or under them, be and they are hereby enjoined from instituting or prosecuting receivership proceedings against the plaintiff under the provisions of Section 7962, Compiled Oklahoma Statutes of 1921.

It is further ordered and adjudged that until the further order of this court the plaintiff shall not produce from its wells in the Oklahoma City field now drilled or hereafter to be drilled, crude oil in excess of ten thousand barrels per day.

It is further ordered and adjudged that J. Berry King, as Attorney General of the State of Oklahoma, immediately take the necessary action to dissolve the restraining order or temporary injunction heretofore issued in Cause No. —, entitled, "State of Oklahoma, ex rel. J. Berry King, Attorney General versus Champlin Refining Company", now pending in the District Court of Oklahoma County, Oklahoma.

It is further ordered and adjudged that this order shall become effective upon the plaintiff giving a good and sufficient bond in the sum of $200,000, conditioned to pay, in the event such proration order or orders shall be finally ad-

[fol. 553] judged in this suit to be valid, any damages that may finally be adjudged to have accrued to any person by reason of any violation or violations by the plaintiff of such proration order or orders including the damages, if any,

which may be adjudged finally by any court of competent jurisdiction to have been sustained by adjoining or adjacent owners by the drainage of their crude oil by reason of the fact that plaintiff shall take crude oil in excess of the proration order or orders while such adjoining or adjacent owners are limited to the terms thereof, and running to the Corporation Commission of the State of Oklahoma for the use and benefit of such person or persons, their heirs, successors and assigns; and to be approved by the clerk of this court.

It is further ordered and adjudged that said bond shall be given in any event not later than ten days from this date.

The above order is approved by Cotteral, Circuit Judge, except as to leave given to the plaintiff to produce oil in excess of existing proration orders.

Guthrie, Oklahoma, June 13th, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 554 & 555] Bond on stay order for $200,000, approved and filed June 22, 1931, omitted in printing.

[fol. 556] In United States District Court

[Title omitted]

Order Vacating Stay Order—Filed Aug. 5, 1931

The said cause comes on for determination of the petitions of Phillips Petroleum Company, et al., to vacate the order of this court dated June 13, 1931, granting to the plaintiff herein a stay of the proration orders of the defendant Commission, and ordering that the plaintiff should not produce from its wells in the Oklahoma City field crude oil in excess of 10,000 barrels per day, pending appeal of the plaintiff from an order of this court denying it a temporary injunction in this cause.

And the court having considered the report of Honorable A. G. C. Bierer, special master to whom said petitions were referred, and the exceptions to said report, and being fully advised, it is this day

Ordered that said exceptions be and they are hereby overruled and said report and the findings contained therein be and they are approved and adopted; and it is further

Ordered that the said stay order of June 13, 1931, to the extent aforesaid, be and it is hereby vacated and set aside. To which the plaintiff at the time duly excepted and excepts.

Dated August 5, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge.

I dissent from the action of the majority of the Court in vacating the order of June 13, 1931.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 557] In United States District Court

Motion to Reduce Bond—Filed Aug. 31, 1931

Comes now Champlin Refining Company, a New Mexico corporation, Plaintiff, and represents to the Court:

That on the 13th day of June, 1931, an order was entered in this cause enjoining the Defendants from assessing penalties against this plaintiff for any alleged violation of the Proration Orders of the Corporation Commission, and further enjoining this Plaintiff from producing from its leases in the Oklahoma City field, crude oil in excess of 10,000 barrels per day, until the further order of this Court, upon filing with the Clerk of said Court an acceptable bond in the sum of $200,000.00, conditioned for the payment of any damages that might be adjudged to have accrued to any person or persons by reason of any violation by this Plaintiff of such Proration Orders;

That said bond has been filed and approved by the Clerk and is now in full force and effect; that in order to obtain such bond it became necessary for this Plaintiff to deposit

with the National Surety Company, surety thereon, — the sum of $100,000.00 in United States Government Bonds as collateral, and to agree to pay the said Surety Company as further collateral to the obligation thereon the sum of $5,000.00 per month until an additional $100,000.00 shall have been deposited; and that if such bond be not reduced by this Court, and the Surety relieved of a continuing increasing responsibility thereon, which in fact will not arise or exist, it will be necessary for this Plaintiff to continue said monthly payments to said Surety Company in the sum of $5,000.00 per month for a period of twenty months; [fol. 558] That in computing the amount for which said bond should be required, Judge Phillips announced orally that a majority of the Court has assumed that for a basis thereof the wells of the Plaintiff would produce sand Order as so entered on June 13, 1931, for a period of approximately ninety days on the assumption that the matter would be finally determined in the United States Supreme Court within that period of time, at the rate of 10,000 barrels per day, fifty per cent of which volume of crude oil so produced might be ultimately shown to have been unlawfully drained from offset properties, and that upon the market value as of that day of Thirty-five Cents per barrel, such volume of crude oil so unlawfully drained, if ultimately so found, would be of the approximate value of $157,500.00;

That before the said ninety day period had expired, to-wit: on the 5th day of August, 1931, when but forty-five days of such period had expired, this Court vacated the above described Order of June 13, 1931, and that on August 4, 1931, the wells of this Plaintiff were shut in by the Governor of the State of Oklahoma in the use of the military authority of the state, and that the wells of this Plaintiff in the Oklahoma City field have not produced since that date and will not be produced in violation of the military order of the Governor of the State of Oklahoma or of the Proration Laws of the State of Oklahoma as enforced by the Corporation Commission of said state, unless and until the Supreme Court of the United States shall so order;

That under said Order of June 13, 1931, and within said forty-five day period, this Plaintiff produced a total of

423,802.12 barrels, and that during such period of time would have been entitled to produce without any Court order 77,305.08, so that the excess of production upon account of the Court Order of June 13, 1931, over and above that volume which might have been produced under the Proration Orders of the Corporation Commission was 346,497.04, and upon the assumption that fifty per cent thereof was unlawfully drained from off-set properties, a total of 173,248.52 barrels would represent the entire drainage that [fol. 559] might be charged against the Plaintiff: that the total market value of such excess production upon the basis of the gravity thereof as run was $107,590.94; that in the event fifty per cent thereof was unlawfully drained, the total value of such oil so unlawfully drained for the entire period of time would be $53,795.47, and a bond in the sum of $60,000.00 would adequately protect any and all persons who may have been damaged by the production of such oil, in the event such Proration Orders may finally be adjudged to be valid;

That this Plaintiff corporation is thoroughly solvent and has a net worth of sould value in excess of the sum of Seven Million Dollars, and is amply able to respond in damages to any person or persons should the entire value of said oil calculated at any time upon any basis be ultimately determined to have been wrongfully drained against such person or persons; that it is inequitable and unnecessarily burdensome upon this Plaintiff to require it to continue to deposit $5,000.00 monthly to said Bonding Company without any liability continuing upon said bond, so that said bond should be reduced to the sum of $60,000.00, or to such other sum as may in the discretion of this Honorable Court seem proper.

Wherefore this Plaintiff moves the Court that an order be entered reducing the amount of the bond herein given in conformity with the Order of June 13, 1931, to the sum of Sixty Thousand ($60,000.00) Dollars, or to such other sum as to this Honorable Court may seem proper and just, and that in addition thereto an Order of this Court be entered releasing the National Surety Company from any liability upon the bond which it has heretofore executed in behalf of this Plaintiff in excess of said sum so fixed by this Honorable Court.

[fol. 560] Dated this 29th day of August, 1931.

Champlin Refining Company, a New Mexico Corporation, by Harry O. Glasser, H. G. McKeever, Edgar S. De Meules, Geo. S. Ramsey, Counsel.

Duly sworn to by G. E. Leverton. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 561] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Sept. 23, 1931

The above named plaintiff, conceiving itself aggrieved by the decree and order made in the above entitled cause on the 11th day of September, 1931, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and prays that the appeal may be allowed, and that a transcript of the record, proceedings, exhibits and papers upon which said decree and order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this the 23rd day of September, 1931.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar S. de Meules, Attorneys for Plaintiff-Appellant.

[File endorsement omitted.]

[fol. 562] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Sept. 23, 1931

The Plaintiff concurrently herewith files its Petition for Appeal from the decree of this Court made and entered on the 11th day of September, 1931, to the Supreme Court of the United States, and herewith accompanies the same with this Assignment of Errors, upon which it will rely upon its

prosecution of the Appeal in the above entitled cause from the Decree so made, and states that this Honorable Court erred:

(1) In holding and decreeing that the Act of the Oklahoma Legislature approved February 11, 1915, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the Act and declaring an emergency", embodied in Sections 7954 to 7963, inclusive, Oklahoma Compiled Statutes of 1921, hereinafter denominated "Curtailment Act", is not in contravention of the Fourteenth Amendment to the National Constitution in that it deprives the Plaintiff of its property without due process of law.

(2) In failing to hold and decree the said Curtailment Act in contravention of the Fourteenth Amendment to the [fol. 563] National Constitution in that it is too uncertain and indefinite to confer upon the Corporation Commission of the State of Oklahoma power and authority to make the orders, rules and regulations Plaintiff complains of in its Third Amended and Supplemental Bill and/or to make rules, regulations and orders of any effect beyond the prevention of the actual physical waste of crude oil in the production thereof in the State of Oklahoma.

(3) In failing to hold and decree that said Curtailment Act in contravention of the Fourteenth Amendment to the National Constitution insofar as it undertakes to vest power in the Corporation Commission to make rules and regulations in the form promulgated and so introduced in evidence in this case restraining the Plaintiff and other oil producers in the Oklahoma City field and other oil fields in Oklahoma from producing oil without physical waste from leases owned by such producers.

(4) In failing to hold and decree the Curtailment Act in contravention of the Fourteenth Amendment to the National Constitution insofar as it undertakes to empower the Corporation Commission to make rules and regulations prohibiting the Plaintiff and others similarly situated from extracting from its leases and/or their leases in the Oklahoma City oil field and other fields in the State of Okla-

homa, all the oil its wells will produce without the application of artificial energy, so long as the Plaintiff has facilities for the customary and usual refining and marketing utilization of such oil so produced.

(5) In failing to hold and decree the said Curtailment Act entire and inseparable and as such a price-fixing statute delegating authority to the Corporation Commission to fix prices of crude oil after making the investigation required by Section 2 of the Act, and that when, as of necessity the Act be thus construed, must likewise necessarily be held to be in violation of the Fourteenth Amendment to the National Constitution, in that it deprives

(a) the Plaintiff of its liberty of contract;

[fol. 564] (b) equal protection of the law, and

(c) its property without due process of law.

(6) In failing to hold and decree that, if said Curtailment Act be separable and the second section thereof unconstitutional or separable therefrom, the whole Act, without Section 2, remains void for uncertainty in that it violates the Fourteenth Amendment to the National Constitution in that it is too vague, indefinite and uncertain to vest authority in the Corporation Commission to make and enforce any of the rules, regulations and orders Plaintiff complains of in this case beyond the suppression of actual physical waste of crude oil.

(7) In failing to hold and decree that if said Curtailment Act be separable and the second section thereof separable therefrom, the Act is nevertheless unconstitutional and violative of the Fourteenth Amendment and of Section 8 of Article 1 of the Federal Constitution, in this, to-wit: That it forbids the production of crude oil in excess of reasonable market demands and gives the Corporation Commission of the State of Oklahoma the authority to determine what shall be reasonable market demand, and that the enforcement of such provisions must necessarily result in the fixing of the price of crude oil and must of necessity result in the burdening and regulation of interstate commerce in crude oil, and its products.

(8) In refusing to hold and decree that the following orders of the Corporation Commission in Cause No. 10,146

were intended to and actually did and do have the effect of controlling prices of crude oil in the Oklahoma City field and other fields in Oklahoma and are void because they are in excess of the powers conferred upon the Commission by the Curtailment Act, insofar as they undertake to suppress and restrain the production of crude oil in the Oklahoma City field and other Oklahoma fields without actual physical [fol. 565] waste of said minerals, said orders being as follows:

(a) Order No. 5189 entered June 30, 1930,

(b) Order No. 5292 entered August 30, 1930,

(c) Order No. 5337 entered September 30, 1930,

(d) Order No. 5343 entered October 6, 1930,

(e) Order No. 5345 entered October 10, 1930,

(f) Order No. 5369 entered October 28, 1930,

(g) Order No. 5374 entered November 3, 1930,

(h) Order No. 5387 entered November 8, 1930,

(i) Order No. 5396 entered December 4, 1930,

(j) Order No. 5413 entered December 30, 1930,

(k) Order No. 5414 entered December 30, 1930,

(l) Order No. 5468 entered April 20, 1931,

(m) Order No. 5486 entered May 29, 1931,

(n) Order No. 5548 entered June 27, 1931,

(o) Order No. 5549 entered June 29, 1931;

together with the respective Journal Entries made by the Commission for the enforcement of these orders, and Plaintiff re-states that these orders separately and collectively have the force and effect of depriving plaintiff of its

(a) liberty of contract.

(b) equal protection of the laws, and

(c) property without due process of law,

in violation of the Fourteenth Amendment to the National Constitution.

(9) In failing to hold and decree that the orders identified in Assignment of Error No. 8, are unconstitutional and violative of the Fourteenth Amendment and of Section 8 of Article 1 of the Federal Constitution, in this, to-wit: That they forbid the production of crude oil in excess of reasonable market demands as determined by the Corporation Commission, and that such provisions must necessarily result in the fixing of the price of crude oil and must of neces- [fol. 566] sity result in the regulation of interstate commerce in crude oil, and its products.

(10) In refusing to hold and decree that the orders of the Corporation Commission identified in Assignment of Error No. 8, were not promulgated for the purpose of preventing waste or protecting any other public interest, but were, on the contrary, promulgated and sought to be enforced for the purpose of controlling the crude oil market for the benefit of a particular class, to-wit: producers of crude oil.

(11) In refusing to hold and decree that the orders of the Corporation Commission, identified in Assignment of Error No. 8, were promulgated for the purpose of and did fix market demand for crude oil, within the State of Oklahoma, and were designed to and did limit the production of crude oil within the State of Oklahoma, to such figure as would equal the market demand thus arbitrarily fixed by the Corporation Commission.

(12) In holding and decreeing that to thus limit the production of crude oil to such arbitrarily fixed market demand, constitutes a reasonable and necessary means of preventing physical waste of crude oil.

(13) In failing to find that the market demand for crude oil within the State of Oklahoma and from each field thereof, including the Oklahoma City field, as found by the Corporation Commission in the orders identified in Assignment of Error No. 8, was ascertained and computed merely by receiving from the pipe line companies which had connections in each field, the volume of crude oil which such pipe line company, or pipe line companies, "nominated" to run and purchase during the period fixed within each of said orders.

(14) In failing to hold and decree that the action of the Corporation Commission in computing market demand en-
[fol. 567] tirely upon the "nominations" of the pipe line companies, sustains a holding that the purpose of the orders described in Assignment of Error No. 8, was not to prevent waste or protect any other public interest, but rather to control the market for crude oil for the oil producers within the State of Oklahoma; and further sustains a holding that the orders so described do not employ reasonable or necessary means to prevent physical waste.

(15) In failing to find that immediately following the en banc announcement by the Corporation Commission on March 4, 1931, that the allowable production from the Oklahoma City field should be raised from 125,000 barrels per day to 150,000 barrels per day, the Stanolind Crude Oil Purchasing Company, a subsidiary of the Standard Oil of Indiana and one of the principal purchasers of crude oil within the State of Oklahoma, at once lowered its posted price for crude oil purchased within the State, from $1.07 per barrel, to 67¢ per barrel, and that on March 5, 1931, upon the written request of the Governor of Oklahoma, the Corporation Commission, without further hearing, immediately rescinded its announcement of March 4, 1931, thereby determining market demand upon the caprice of the Governor and the cut in price by the Stanolind Company.

(16) In failing to hold and decree that such action of the Corporation Commission in rescinding its order identified in the last preceding Assignment of Error, without hearing thereon, but solely upon the announcement of such cut in price, sustains a finding that the orders of the Commission described in Assignment of Error No. 8, were not promulgated for the purpose of preventing waste or protecting any other public interest, but were, on the contrary, so promulgated, for the purpose of controlling the crude oil market for the benefit of oil producers within the State of Oklahoma; and that the means employed by such orders were not reasonable and necessary for the purpose of preventing physical waste.

[fol. 568] (17) In failing to hold and decree that the appointment of umpires by the orders described in Assignment of Error No. 8, whose salaries are paid by private

operators, sustains a finding that the said orders are, and were, not promulgated for the purpose of protecting any public interest, but for the purpose of benefiting the operator paying the salaries of such umpires.

(18) In refusing to hold and decree that the market demand which is fixed by the orders of the Corporation Commission identified in Assignment of Error No. 8, is to the extent of at least 65% thereof, an interstate market demand.

(19) In failing to find that the said Curtailment Act has never been enforced by orders of the Corporation Commission, either as a waste measure or otherwise, except in periods when overproduction of crude oil has threatened a reduction of the posted or market price thereof.

(20) In refusing to hold and decree that the failure of the Corporation Commission to enforce said Curtailment Act except in periods of overproduction sustains a necessary finding that the purpose of the said curtailment act and of the orders of the Commission identified in Assignment of Error No. 8, was to control the market for a particular class, to-wit: The oil producer, rather than for the purpose of preventing physical waste of natural resources.

(21) In refusing to hold and decree that without the provisions of Section 5 of the Curtailment Act requiring the Commission to gauge or cause to be gauged each oil well for the purpose of determining its production, the provisions of Section 4 of the Act would be unconstitutional in that it vests in the Commission unlimited and unrestrained arbitrary power and discretion over Plaintiff's property and the property of others similarly situated in violation of the due process clause of the Fourteenth Amendment to the National Constitution and deprives and deprived Plaintiff and others similarly situated of their [fol. 569] liberty of contract and equal protection of the laws guaranteed by the Fourteenth Amendment to the National Constitution.

(22) In refusing to hold and decree that a gauge of each well required by Section 5 of the Curtailment Act was a condition precedent to the Commission's authority to make

any rules or orders regulating or specifying the amount of oil such well shall or may be permitted to produce.

(23) In failing to hold and decree that a legal or valid gauge of the wells in either the Seminole or Oklahoma City fields or other fields, had not been made by the Commission or under the Commission's orders and directions and that without such a gauge, the Commission was powerless to exercise the authority attempted to be conferred upon it by Sections 3 and 4 of the Curtailment Act.

(24) In refusing to hold and decree that gauges made in accordance with the rules of the Commission permitting the operator to gauge his own wells, in the presence of a representative of an adjoining operator, although agreed to by the majority of the Operators's Committee or Umpire, are void in that interested parties were permitted to determine the basis (potential production) for the proration of markets in which such operators are and were interested.

(25) In refusing to hold and decree that the Oklahoma Legislature was without power to delegate authority to the Corporation Commission to create the office of Umpire and prescribe the qualifications and duties thereof and to "arrange" for the payment by beneficiary interests, of his salary, and that if Section 5 of the Curtailment Act undertakes to vest that authority in the Commission, it is void under Section 1 of Article 4 of the Oklahoma Constitution and Section 1 of Article 5 of the Oklahoma Constitution.

[fol. 570] (26) In refusing to hold and decree that the Commission was without authority to delegate to Ray Collins and/or Otto Bradford as Umpire or Umpires any jurisdiction of a discretionary nature and that all the rules and regulations undertaking to vest any powers in Collins and Bradford other than purely clerical or ministerial, are void.

(27) In refusing to hold and decree that gauges made under the supervision of Collins and Bradford are illegal and void because their appointment as Umpires was against public policy and contrary to every sense of public decency and that the proration orders and regulations are all permeated with this inseparable vice and that neither

Plaintiff nor others similarly situated should be coerced under threatened penalties to obey any orders and regulations so created.

(28) In refusing to hold and decree that the payment of salaries by the Operator's Committee collected by the Committee from persons, firms and corporations engaged in the production of crude oil in Oklahoma, and owning pipe lines and refineries within such State, to Ray Collins and decency and vitiates all their alleges acts and so far contaminates the Commission's rules and regulations as to render them unenforceable and null and void as laws regulating and restraining the production of crude oil in Oklahoma.

(29) In refusing to hold and decree that under Section 1 of Article 15 of the Oklahoma Constitution and Section 126 of the Oklahoma Compiled Statutes of 1921, the failure of Ray Collins and Otto Bradford to take and subscribe to the oath of office of Umpire or Umpires was a misdemeanor and operated to forfeit the right of each to the office of Umpire.

(30) In refusing to hold and decree that insofar as Section 8 of the Curtailment Act undertakes to authorize the [fol. 571] Commission to impose fines under Section 3498 of Oklahoma Compiled Statutes of 1921 for the violation of any of its rules and orders complained of in this case, the same is in violation of Section 1 of Article 4 of the Oklahoma Constitution, Sections 19 and 35 of Article 9 of the Oklahoma Constitution.

(31) In refusing to hold and decree that the orders, rules and regulations of the Commission and their enforcement operate directly to interfere with, restrain, and burden interstate commerce in violation of Section 8 of Article 1 of the National Constitution.

(32) In making and entering, over the objection of Plaintiff, its Final Decree of September 11, 1931.

(33) In failing and refusing to define the status of the Plaintiff as that of an integrated Company, and in refusing to grant Plaintiff's Requested Finding of Fact No. 4.

(34) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 6.

(35) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 7.

(36) In applying a so-called "Revised Formula" in determining the Potentials of certain wells in the Oklahoma City field, resulting in a calculated potential upon such wells which equals but one-third of the potential for such well as carried upon the records of the Corporation Commission.

(37) In failing and refusing to give Plaintiff's Requested Finding of Fact No. 9, in connection with the Court's Finding of Fact No. 5.

(38) In the finding set forth in the concluding sentence of the Court's Finding of Fact No. 5, for the reason that [fol. 572] the same constitutes a finding of an affirmative fact by reason of the silence of the record upon the subject matter thereof.

(39) In its Finding of Fact No. 6.

(40) In its Finding of Fact No. 7.

(41) In its Finding of Fact No. 10.

(42) In refusing to grant Plaintiff's Requested Finding of Fact No. 12.

(43) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 13.

(44) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 14.

(45) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 15.

(46) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 16.

(47) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 17.

(48) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 18.

(49) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 19.

(50) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 20.

(51) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 22.

(52) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 24.

(53) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 26.

(54) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 27.

(55) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 28.

[fol. 573] (56) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 29.

(57) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 30.

(58) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 31.

(59) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 32.

(60) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 33.

(61) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 36.

(62) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 37.

(63) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 38.

(64) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 40.

(65) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 41.

(66) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 43.

(67) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 44.

(68) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 45.

(69) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 46.

(70) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 47.

(71) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 48.

[fol. 574] (72) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 49.

(73) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 51.

(74) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 52.

(75) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 53.

(76) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 54.

(77) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 56.

(78) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 57.

(79) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 59.

(80) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 60.

(81) In failing and refusing to grant Plaintiff's Requested Finding of Fact No. 61.

(82) In its Finding of Fact No. 21.

(83) In its Finding of Fact No. 22.

(84) In its Finding of Fact No. 24.

(85) In its Finding of Fact No. 25.

(86) In its Finding of Fact No. 26.

(87) In its Finding of Fact No. 27.

(88) In its Finding of Fact No. 28.

(89) In its Finding of Fact No. 29.

(90) In its Finding of Fact No. 30.

(91) In its separately stated Conclusion of Law No. I.

(92) In its separately stated Conclusion of Law No. II.

(93) In its separately stated Conclusion of Law No. III.

[fol. 575] (94) In its separately stated Conclusion of Law No. IV.

(95) In its separately stated Conclusion of Law No. V.

(96) In its separately stated Conclusion of Law No. VI.

(97) In its separately stated Conclusion of Law No. VII.

(98) In its separately stated Conclusion of Law No. VIII.

(99) In its separately stated Conclusion of Law No. IX.

(100) In its separately stated Conclusion of Law No. X.

(101) In its separately stated Conclusion of Law No. XI.

(102) In its separately stated Conclusion of Law No. XII.

(103) In its separately stated Conclusion of Law No. XIII.

(104) In its separately stated Conclusion of Law No. XIV.

(105) In its separately stated Conclusion of Law No. XV.

(106) In its separately stated Conclusion of Law No. XVI, except that portion thereof which holds invalid Sections 8 and 9 of said Act.

(107) In its separately stated Conclusion of Law No. XVII.

(108) In its separately stated Conclusion of Law No. XVIII, except that portion thereof which holds that the Plaintiff is entitled to a permanent injunction against the enforcement of said Sections 8 and 9 of said Act.

(109) Overruling and denying Petition for Rehearing.

Wherefore the Appellant prays that said Decree be reversed, and that said District Court for the Western Dis-

trict of Oklahoma be ordered to enter a Decree reversing the decision of that Court in said cause.

Harry O. Glasser, H. G. McKeever, Edgar A. deMeules, Geo. S. Ramsey, Counsel for Appellant. Of Counsel: Nathan Scarritt, Van Stewart, Roy Elam, H. H. McKeever, Garrett Logan, Villard Martin, E. S. Champlin.

[File endorsement omitted.]

[fol. 576] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1156

CHAMPLIN REFINING COMPANY, a Corporation, Plaintiff,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, et al., Defendants

ORDER ALLOWING APPEAL—Filed Oct. 17, 1931

Now, on this 15th day of October, 1931, came the plaintiff Champlin Refining Company, a New Mexico corporation, by its attorneys and files herein and presents to the Court its petition praying for the allowance of an appeal from the decree and order entered herein on the 11th day of September, 1931, to the Supreme Court of the United States, and it appearing that the plaintiff has filed therewith its Assignment of Errors, and the Court being fully advised in the premises does hereby allow an appeal to the Supreme Court of the United States as prayed for upon the filing of a bond in the sum of Two Thousand ($2,000.00) Dollars, with good and sufficient surety to be approved by the Court.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 577-580] Bond on appeal for 2,000, approved and filed October 17, 1931, omitted in printing.

[fol. 581] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR CROSS-APPEAL—Filed Oct. 12, 1931

Your petitioners, Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes and C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and their successors in office, and Paul Walker, E. R. Hughes and C. C. Childers, and J. Berry King as Attorney General of the State of Oklahoma, and J. Berry King, and Lewis R. Morris as County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, defendants in the above-entitled cause, respectfully show that Champlin Refining Company, plaintiff in the above-entitled cause, has been allowed an appeal from the decree made on the 11th day of September A. D. 1913 in this cause, and your petitioners also consider themselves aggrieved by said decree in so far as it adjudges Sections 8 and 9 of the Act of the Legislature of the State of Oklahoma, entitled "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of same from the ground, and conferring authority on the Corporation Commission, prescribing the penalty [fol. 582] for the violation of this Act, and declaring an emergency." Approved February 11th, 1915, and being Sections 7961 and 7962 of the Compiled Oklahoma Statutes, 1921, are not valid, and perpetually enjoining and restraining the defendants, J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions or any part thereof of said Sections 8 and 9 of said Act, and therefore pray for the allowance of an appeal by them from said decree to the Supreme Court of the United States, for the reasons stated in the assignment of errors filed herewith.

Dated this the 12th day of October, A. D. 1931.

J. Berry King, Attorney General of the State of Oklahoma; Jesse L. Ballard, Assistant Attorney General of the State of Oklahoma; E. S. Ratliff, Attorney for the Corporation Commission of the State of Oklahoma; W. P. Z. German, John H. Miley, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 583] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Oct. 12, 1931

Comes now the said Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes, C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and their successors in office, and Paul Walker, E. R. Hughes, and C. C. Childers, and J. Berry King as Attorney General of the State of Oklahoma, and J. Berry King, and Lewis R. Morris as County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, defendants in the above-entitled cause, and file the following Assignment of Errors upon which they will rely in the prosecution of the appeal herewith petitioned for in said cause from the decree entered upon the 11th day of September, A. D. 1931:

I

The Court erred in its sixteenth Conclusion of law, in holding that Section 8, providing punishment by fine and imprisonment for direct or indirect violations of the provisions of the Act of the Oklahoma Legislature approved [fol. 584] February 11, 1915, entitled, "An Act defining and prohibiting the waste of crude oil or petroleum, providing for the equitable taking of the same from the ground and conferring authority on the Corporation Commission, prescribing the penalty for the violation of the Act and declaring an emergency," being Section 7961, Compiled Oklahoma Statutes 1921, provided in terms a penalty for violation of the Act only, and not for violations of the Orders, Rules and Regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect.

II

The court erred in not holding and decreeing that valid orders, rules and regulations of the Corporation Commission made pursuant to the Act for the purpose of carrying it into effect, became a part of the Act, and that violations of such orders, rules and regulations constitute a violation of the Act within the meaning of said Section 8.

III

The Court erred in its sixteenth Conclusion of Law, in holding that Sections 1, 3, 4, 5 and 6 of said Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Sections 7954, 7956, 7957, and 7958 Compiled Oklahoma Statutes, 1931, are too indefinite and uncertain as penal provisions to warrant the imposition of the penalties provided in Section 8 of said Act, becoming Section 7961, Compiled Oklahoma Statutes, 1921; for violations thereof as distinguished from violations of the orders, rules and regulations of the Commission.

IV

The Court erred in its sixteenth Conclusion of Law in holding that Section 8 of said Act of the Oklahoma Legislature approved February 11th, 1915, being Section 7961, Compiled Oklahoma Statutes, 1921, is invalid.

V

The Court having found in its Finding of Fact No. XXVI, that, "no prosecution has been commenced against the plaintiff or any of its officers, agents or employees under [fol. 585] Section 8 of the Act," and not having found that such prosecution was threatened, or contemplated, it erred in construing said Section and pronouncing judgment upon its validity; and further erred in not holding and decreeing that the construction and validity of said Section 8 did not properly arise in this suit.

VI

The Court erred in its eighteenth Conclusion of Law, in holding and decreeing that the plaintiff is entitled to a permanent injunction against the defendants J. Berry King as Attorney General of the State of Oklahoma, and Lewis R. Morris, as County Attorney of Oklahoma County, Oklahoma, and their respective successors in office, enjoining them from instituting or prosecuting any proceedings against the plaintiff under and by virtue of the provisions of Section 8 of said Act, being Section 7961, Compiled Oklahoma Statutues, 1921.

VII

The Court erred in its said decree entered September 11th, 1931, adjudging that said Section 8 of said Act of the Oklahoma Legislature approved February 11th, 1915, being Section 7961, Compiled Oklahoma Statutes, 1921, is not valid, and perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions of said Section 8 of said Act, or any part thereof.

VIII

The Court erred in its sixteenth Conclusion of Law, in holding that the provisions of Section 9 of the Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Section 7962 Compiled Oklahoma Statutes, [fol. 586] 1921, for the appointment of a receiver for the operation only of producing wells and marketing the product thereof, of any person violating the provisions of — Act, by a Court of competent jurisdiction at the suit of the State through the Attorney General, or any County Attorney, imposes a penalty.

IX

The Court erred in its sixteenth Conclusion of Law, in holding that Section 9 of the Act of the Oklahoma Legislature approved February 11, 1915, being Section 7962, Compiled Oklahoma Statutes, 1921, in terms imposes a penalty for violations of the Act only, and may not be invoked to secure the appointment of a receiver to operate the producing wells and market the production therefrom of any person, firm or corporation violating the orders, rules and regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect.

X

The Court erred in not holding and decreeing that valid orders, rules and regulations of the Corporation Commission made pursuant to the Act for the purpose of carrying it into effect, became a part of the Act.

XI

The Court erred in not holding and decreeing that under the provisions of Section 9 of said Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Section 7962 Compiled Oklahoma Statutes, 1921, the Attorney General or the County Attorney, may institute a proceeding in a Court of competent jurisdiction, against any person, firm or corporation violating the orders, rules and regulations of the Corporation Commission made pursuant to the Act for the purpose of carrying it into effect, for the appointment of a receiver of the producing properties of such person, firm or corporation with authority only to operate the producing wells and market the product thereof.

[fol. 587]

XII

The Court erred in its sixteenth Conclusion of Law, in holding that Sections 1, 3, 4, 5 and 6 of the said Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Sections 7954, 7956, 7957, 7958, and 7959 Compiled Oklahoma Statutes, 1921, are too indefinite and uncertain as penal provisions to warrant the appointment of a receiver as provided by Section 9 of the said Act, being Section 7962 Compiled Oklahoma Statutes, 1921, for violations thereof, as distinguished from violations of the orders, rules and regulations of the Commission.

XIII

The Court erred in its sixteenth Conclusion of Law in holding that Section 9 of said Act of the Oklahoma Legislature, approved February 11th, 1915, being Section 7962, Compiled Oklahoma Statutes, 1921, is invalid.

XIV

The Court not having found that there is any pending proceeding for the appointment of a receiver pursuant to the provisions of Section 9 of said Act of the Legislature of the State of Oklahoma approved February 11, 1915, being Section 7962, Compiled Oklahoma Statutes, 1921, it erred in construing said section and pronouncing judgment upon its validity; and further erred in not holding and

decreeing that the construction and validity of said Section 9 did not properly arise in this suit.

XV

The Court erred in its eighteenth Conclusion of Law in holding and decreeing that the plaintiff is entitled to a permanent injunction against the defendant J. Berry King as Attorney General of the State of Oklahoma and Lewis R. Morris as County Attorney of Oklahoma County, Oklahoma, and their respective successors in office, enjoining [fol. 588] them from instituting or prosecuting any proceedings against the plaintiff under and by virtue of the provisions of Section 9 of said Act, being Section 7962, Compiled Oklahoma Statutes, 1921.

XVI

The Court erred in its said decree entered September 11th, 1931, adjudging that said Section 9 of said Act of the Oklahoma Legislature approved February 11th, 1915, being Section 7962, Compiled Oklahoma Statutes, 1921, is not valid, and perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees from enforcing or attempting to enforce the provisions of said Section 9 of said Act, or any part thereof.

Wherefore said defendants pray that said decree in so far as it adjudges Sections 8 and 9 of the said Act of the Legislature of the State of Oklahoma, approved February 11th, 1915, being Sections 7961 and 7962 of the Compiled Oklahoma Statutes, 1921, are not valid, and perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, and their servants and employees, from enforcing or attempting to enforce said Sections, be reversed, and that said decree be reformed, and decree rendered on the merits dismissing plaintiff's bill in its entirety and denying to it any relief,

and for such other and further relief as to the Court may seem just and proper.

J. Berry King, Attorney General of the State of [fol. 589] Oklahoma; Jesse L. Ballard, Assistant Attorney General of Oklahoma; E. S. Ratliff, Attorney for the Corporation Commission of Oklahoma; W. P. Z. German, John H. Miley, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 590] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed Oct. 21, 1931

Now, on this the 17th day of October, A. D. 1931, on reading the petition of the Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes and C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and their successors in office, and Paul Walker, E. R. Hughes and C. C. Childers, and J. Berry King as Attorney General of the State of Oklahoma, and J. Berry King, and Lewis R. Morris, County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, for an appeal from the decree or order entered September 11, 1931, in the above entitled cause, and on consideration of the assignment of errors filed herewith, it is ordered that the appeal herein be allowed as prayed for and it is further ordered that a certified transcript of the record and all proceedings be transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at Two Hundred Fifty ($250.00) Dollars, conditioned as required by law, as a cost bond.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 591 & 592] Bond on appeal for $250.00, approved and filed October 21, 1931, omitted in printing.

[fol. 593] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD TO BE SENT TO THE SUPREME COURT OF THE UNITED STATES—Filed Oct. 22, 1931

To the Clerk of the United States District Court for the Western District of the State of Oklahoma:

In making up the record and transcript for the Supreme Court of the United States in the above entitled cause on appeal from the decree or order of September 11th, 1931, you will include in the record and transcript only such parts as are hereby mentioned, omitting all other parts of the record, to-wit:

(1) Order of Circuit Court of Appeals for the Tenth Circuit assigning Honorable Franklin E. Kennamer as District Judge to the Western District of Oklahoma.

(2) The notice to The Governor of the State of Oklahoma, filed December 10th, 1930, and endorsement of service thereon.

(3) The Order of February 9th, 1931, denying Plaintiff's Application for Temporary Injunction.

(4) Petition for Appeal, dated April 22, 1931.

[fol. 594] (5) Order, dated April 22, 1931, allowing appeal.

(6) The notice to The Governor of the State of Oklahoma, together with the Governor's acceptance of service thereon, filed June 13th, 1931.

(7) Plaintiff's Third Amended and Supplemental Bill of Complaint filed by leave of Court on the 3rd day of Aug., 1931 (omitting exhibits thereto attached for the reason same are identified and printed in their entirety in the narrative of the evidence as Plaintiff's Exhibit 33).

(8) Answer of Defendants to Third Amended and Supplemental Bill of Complaint.

(9) Defendants' Requested Findings of Fact.

(10) Plaintiff's objections thereto.

(11) Defendants' reply to Plaintiff's objections to Defendants' Requested Findings of Fact.

(12) Plaintiff's Requested Findings of Fact.

(13) Order Denying and Disallowing Plaintiff's Requested Findings of Fact.

(14) Findings of Fact and exceptions thereto in the cause filed on September 11th, 1931.

(15) Conclusions of law and exceptions thereto filed in the cause on September 11th, 1931.

(16) Decree entered September 11th, 1931.

(17) Majority revised opinion of the Court filed on September 1st, 1931.

(18) Dissenting revised opinion of Judge Kemmamer, filed on October 17th, 1931.

(19) Plaintiff's Petition for Re-hearing, filed on September 11th, 1931.

(20) Order entered September 24th, 1931, denying Plaintiff's Petition for Re-hearing.

(21) Plaintiff's Petition for Appeal, filed on September 23rd, 1931.

(22) Plaintiff's Assignment of Errors on Appeal, filed [fol. 595] (23) Order Allowing Appeal, entered on October 17th, 1931.

(24) Plaintiff's Appeal Bond, filed October 17th, 1931.

(25) Condensed statement in narrative form of the evidence introduced at the hearing, together with all exhibits thereto attached, introduced at the trial.

(26) Order of June 13th, 1931.

(27) Bond thereon, approved June 22nd, 1931.

(28) Order Vacating Order of June 13th, 1931, and exceptions thereto.

(29) Motion to Reduce Bond, filed August 31st, 1931.

(30) Citation.

(31) This Præcipe.

Harry O. Glasser, H. G. McKeever, Geo. A. Ramsey, Edgar A. deMeules, Counsel for the Plaintiff.

[fol. 596] We, the undersigned, attorneys of record in the above entitled cause, do hereby accept service of a copy of

the foregoing præcipe made on us this the 19th day of October, 1931.

Jesse L. Ballard, Asst. Atty. Gen.; W. P. Z. German, J. H. Miley, E. S. Ratliff, for Defendant-appellees Corporation Commission of the State of Oklahoma and Paul Walker, C. C. Childers, and E. R. Hughes and for J. Berry King, as Attorney General for the State of Oklahoma, and Lewis R. Morris, as County Attorney of Oklahoma County, State of Oklahoma, and for the Defendant Lewis R. Morris, as Co. Atty. of Oklahoma County, Oklahoma; Chas. West, for the Governor of the State of Oklahoma.

[File endorsement omitted.]

[fol. 597] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR RECORD TO BE SENT TO THE SUPREME COURT OF THE UNITED STATES ON APPEAL BY DEFENDANT—Filed Oct. 22, 1931

To the Clerk of the United States District Court for the Western District of Oklahoma:

In making up the record and transcript for the Supreme Court of the United States in the above entitled cause on appeal allowed by the defendants from the decree or order of September 11, 1931, you will include in the record and transcript only such parts as are hereby mentioned omitting all other parts of the record, to-wit:

(1) Plaintiff's Third Amended and Supplemental Bill of Complaint filed by leave of Court on the 29th day of June, 1931; refiled Aug. 3, 1931.

(2) Answer of defendants to Third Amended and Supplemental Bill of Complaint.

(3) Findings of fact in the cause filed on September 11, 1931.

(4) Conclusions of law filed in the cause on September 11th, 1931.

(5) Revised opinion of the Court filed on Sept. 1st, 1931.

(6) Dissenting opinion of Judge Kennamer filed on October 17, 1931.

[fol. 598] (7) The Decree or Order entered on September 11, 1931.

(8) Defendants Petition for appeal filed on October 12, 1931.

(9) Defendants assignment of errors on appeal filed on October 12, 1931.

(10) Order allowing appeal entered on October 17th, 1931.

(11) Defendants appeal bond filed on October 21, 1931.

(12) Citation to plaintiff.

(13) Defendants Counter Præcipe.

(14) This Præcipe.

(15) Stipulation as to contents of Record.

J. Berry King, Attorney General of the State of Oklahoma; Jess L. Ballard, Assistant Attorney General of the State of Oklahoma; E. S. Ratliff, Attorney for Corporation Commission of the State of Oklahoma; W. P. Z. German, John H. Miley, Attorneys for Defendant.

We, the undersigned, attorneys of record for the Plaintiff in the above entitled cause do hereby accept service of a copy of the foregoing præcipe made on us this 22nd day of October, 1931.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar A. deMeules, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 599] IN UNITED STATES DISTRICT COURT

[Title omitted]

COUNTER PRÆCIPE—Filed Oct. 22, 1931

To the Clerk of the United States District Court for the Western District of Oklahoma:

You are hereby requested, pursuant to Equity Rule No. 75, and Supreme Court Rule No. 10, to incorporate into the

transcript of record on the appeal herein, in addition to the portion of the record indicated by plaintiff herein by its præcipe, to be included in the transcript of the record herein, the following:

(1) Petition for cross-appeal filed October 12, 1931.
(2) Defendants' Assignment of Errors on Appeal filed October 12, 1931.
(3) Order Allowing Appeal entered on October 17th, 1931.
(4) Defendants Appeal Bond filed October 21, 1931.
(5) Citation on Appeal to plaintiff.
(6) Præcipe of defendants.
(7) This Counter Præcipe.
(8) Stipulation, as to contents of Transcript of Record.

J. Berry King, Attorney General, Jess L. Ballard, [fol. 600] Assistant Attorney General; E. S. Ratliff, Attorney for Corporation Commission of the State of Oklahoma; W. P. Z. German, Jno. H. Miley, Attorneys for Defendants.

We, the undersigned, attorneys of record for the plaintiff in the above entitled cause, do hereby accept service of a copy of the foregoing Counter Præcipe made on this 22nd day of October 1931.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar A. deMeules, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 601] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD—Filed Oct. 22, 1931

An appeal having been duly taken by both parties, plaintiff and defendants, to the Supreme Court of the United States from the Decree or Order entered September 11th, 1931, and it being provided by Title 28, 864, United States Code (R. S. Sec. 1013) that the transcript of the record filed in the Supreme Court by either appellant may be used on

both appeals; it is hereby stipulated and agreed between the attorneys for the respective parties that the transcript of record to be filed in the Supreme Court of the United States, pursuant to the appeal heretofore allowed to the plaintiff herein, and pursuant to the appeal heretofore allowed to the defendants herein shall include only such parts of the record, mentioned in the Præcipe filed by plaintiff October 22, 1931, and the præcipe filed by defendants October 22, 1931, and such transcript of record shall be used on both appeals.

Harry O. Glasser, H. G. McKeever, Geo. S. Ramsey, Edgar A. deMeules, Attorneys for Plaintiff. J. [fol. 602] Berry King, Attorney General; Jesse L. Ballard, Assistant Attorney General; E. S. Ratliff, Attorney for Corporation Commission of Oklahoma; W. P. Z. German, J. H. Miley, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 603] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 604 & 604a] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO FILE RECORD IN THE SUPREME COURT OF THE UNITED STATES—Filed in Supreme Court Oct. 26, 1931

For satisfactory reasons appearing to the Court, the time for filing the record in this cause in the Supreme Court of the United States, pursuant to the appeal sued out, is extended until the 25th day of November, 1931.

Dated this the 15 day of October, 1931.

John H. Cotteral, Circuit Judge. Orie L. Phillips, Circuit Judge. F. E. Kennamer, District Judge.

[fol. 604b] [File endorsement omitted.]

[fol. 605] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1931

No. 485

CHAMPLIN REFINING COMPANY, Appellant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Appellees

APPELLANT'S DEFINITE STATEMENT OF POINTS UPON WHICH IT RELIES AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Nov. 7, 1931

Appellant relies upon the following points:

First. The Oklahoma Corporation Commission's rules, regulations and proration orders (hereinafter referred to as orders) attached to appellant's Third Amended and Supplemental Bill and contained in Plaintiff's Exhibit 33, being legislative in their nature and made by an instrumentality of the state, are state laws within the meaning of the Constitution of the United States, and although an appeal therefrom is allowed to the Oklahoma Supreme Court by the Legislative Act involved in this case, nevertheless, as that court is without legislative power and can not be vested with such power by the Legislature, the appellant had the right to invoke the jurisdiction of the United States District Court to enjoin the enforcement of said orders without appealing first therefrom to the state Supreme Court.

[fol. 606] Second. The prohibitions of the Fourteenth Amendment to the Constitution of the United States are addressed to individuals acting as officers and agents of the state and as such may be enjoined by the Federal Court from using the power of their office to deny to any person the rights guaranteed by the Fourteenth Amendment to the National Constitution.

Third. The said orders of the Corporation Commission of the State of Oklahoma (hereinafter called Commission) being legislative in their nature, are laws within the meaning of the Constitution of the United States and the Acts of Congress regulating Federal Court jurisdiction.

Fourth. Section 2 of the Act of the Oklahoma Legislature approved February 11th, 1915, (1915 Session Laws, 28, being Sections 7954 to 7963 inclusive, Oklahoma Compiled Statutes, 1921) hereinafter referred to as the Curtailment Act, undertakes to authorize the Commission to fix the price of crude oil produced in Oklahoma and is therefore void in that it is in violation of the Fourteenth Amendment to the Constitution of the United States.

Fifth. Section 2 of the Curtailment Act is not a separable part thereof and therefore the whole act must fall as in violation of the Fourteenth Amendment to the Constitution of the United States.

Sixth. If Section 2 of the said Act is separable and unconstitutional, then the meaning of Section 3 and/or Section 4 thereof must be gathered from Section 2 within the rule that an unconstitutional part of a law may be considered in ascertaining the intent of the Legislature in the remaining parts of the law, and by the application of this rule it is clear that the Curtailment Act is a price-fixing [fol. 607] statute attempting to authorize the Commission to regulate and control prices to be paid and received for crude oil in the carrying on of a private business.

Seventh. If Section 2 of the Curtailment Act is separable and the remaining sections, or parts thereof, may be considered as independent of Section 2, then the Act, without Section 2, is too vague and uncertain to meet the requirements of due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Eighth. Without section 2 of the Curtailment Act the remaining sections (particularly 3 and 4) are too vague, uncertain and indefinite to authorize the Commission to make the orders shown by Plaintiff's Exhibit 33 insofar as said orders go beyond the prevention of physical waste.

Ninth. Appellant's ownership of lands in fee and/or oil leaseholds thereon with the attendant production of crude oil therefrom and the manufacture of gasoline and other refined products from crude oil produced by it, is not a public or quasi public business subject to such regulations as the Curtailment Act imposes.

Tenth. The Curtailment Act is in violation of the Fourteenth Amendment to the Constitution of the United States

in that it denies the appellant the liberty of contract as defined by this court in Allgeyer v. State of Louisiana, 165 U. S. 578, and other decisions.

Eleventh. The aforesaid orders of the Commission restrict and burden interstate commerce in violation of the Commerce Clause of Section 8 of Article 1 of the Constitution of the United States.

[fol. 608] Twelfth. The Commission, in making each of the orders complained of, exceeded the powers conferred or attempted to be conferred upon it by the said Curtailment Act.

Thirteenth. The appellant's right to drill and take the natural flow of crude oil from its lands and/or oil leaseholds and thereafter devote the same to a useful purpose without physical waste is a vested property right protected by the Fourteenth Amendment to the Constitution of the United States and not subject to restraint or suppression by Act of the State Legislature or orders of the Commission.

Fourteenth. The Commission's rules complained of are unreasonably discriminatory against appellant and other producers of crude oil in what is known in the record as the Oklahoma City Oil Field in that they, without any reasonable basis therefor, restrict the production of crude oil in the Oklahoma City Field to a much less percentage of the potential capacity of the wells than allowed by the rules to be produced in the Seminole Oil Field and other oil fields in Oklahoma, and are therefore in conflict with the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Fifteenth. Assuming the Curtailment Act is valid, nevertheless it has been and is being construed and administered by the Commission in such a manner as to make its operation a taking of appellant's property without that due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Sixteenth. Without Section 5 of the Curtailment Act requiring the Commission to gauge or cause to be gauged [fol. 609] each oil well (sought to be prorated) for the purpose of determining its production, the provisions of Sec-

tion 4 of the Act would be unconstitutional in that that section vests in the Commission unlimited and unrestrained arbitrary power and discretion over appellant's property and others similarly situated (a) in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States, (b) deprives the appellant of its liberty of contract, and (c) equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Seventeenth. The gauge of each producing well in the Oklahoma City Oil Field as well as in the other prorated oil fields in Oklahoma required by Section 5 of the Curtailment Act was a condition precedent to the Commission's authority to make any order or orders specifying the volume of crude oil each well shall be permitted to produce.

Eighteenth. A legal gauge of the wells in the Oklahoma City Field, Seminole and/or other prorated oil fields in Oklahoma has not been made by the Commission or under its orders and directions and without such gauge the Commission was powerless to exercise the authority attempted to be conferred upon it by Sections 3 and 4 of the Curtailment Act.

Nineteenth. The Curtailment Act is not self-executing and the state Legislature having made no appropriations at any time for the payment of the expenses of gauging the wells and the salaries of agents of the Commission, all gauges of wells are illegal and void and the Commission's rules are ineffectual.

Twentieth. Gauges made in accordance with the Commission's orders permitting the operator to gauge his own [fol. 610] wells in the presence of a representative of an adjoining operator, although agreed to by the majority of the Operators' Committee and Umpire, are void in that private and non-official parties were permitted to determine the basis (potential production) for the proration of markets and the allowable production from the entire field in which all operators, including appellant, are interested and materially affected.

Twenty-first. The Legislature is without power to delegate authority to the Commission to create the office of

Umpire and prescribe the qualifications therefor and duties thereof and allow payment of the Umpires' salaries by the beneficiaries of the acts of the Umpires, and if Section 5 of the Act is construed to vest that authority in the Commission it is void under Section 1 of Article 4 and Section 1 of Article 5 of the Constitution of the State of Oklahoma.

Twenty-second. The Commission is without authority to delegate to Umpires any jurisdiction of a discretionary nature and all orders designed to vest any such powers in Umpires are void.

Twenty-third. The payment of salaries of Umpires by the Operators' Committee (a non-official organization), collected by said Committee from persons, firms and corporations engaged in the production of crude oil in Oklahoma and/or the operation of pipe lines and/or refineries within Oklahoma, is against public policy and vitiates all gauges of the wells and so far contaminates the Commission's orders as to render them unenforceable in so far as they undertake to restrain the production of crude oil in Oklahoma without actual waste.

[fol. 611] Twenty-fourth. Under Section 1 of Article 15 of the Oklahoma Constitution and Sections 126 and 1561 et al., of the Oklahoma Compiled Statutes, 1921, the taking and subscribing to an oath of office was a condition precedent to the umpires becoming de facto or de jure officers, and no such oath of office having been taken and subscribed by such umpires, their action in the premises was a misdemeanor and all their acts, including gauging the wells, are ipso facto void.

Twenty-fifth. Gauges made under the supervision of the umpires are illegal and void for the reason that the appointment and tenure of office of each umpire was and is against public policy.

Twenty-sixth. The appellant's petition for rehearing filed in the court below should have been granted as the evidence available thereon would have developed facts and events incident to Military rule taking place after the decree of the court below was announced showing the Executive Depart-

ment of the State Government construes the Curtailment Act as a price-fixing statute and enforces it as such.

Respectfully submitted.

Horace G. McKeever, Horace G. McKeever, Harry O. Glasser, Harry O. Glasser, Edgar A. de Meules, Edgar A. de Meules, Geo. S. Ramsey, Geo. S. Ramsey, Counsel for Appellant.

[fols. 612 & 613] This 3rd day of November, 1931, receipt of a copy of the foregoing definite statement of points relied upon by appellant is hereby acknowledged.

J. Berry King, Attorney General of the State of Oklahoma; E. S. Ratliff, Jess H. Ballard, John H. Miley, W. P. Z. German, Associate Counsel for Appellees. Chas. West, Counsel for the Governor of the State of Oklahoma.

[fols. 614 & 615] DESIGNATION OF RECORD TO BE PRINTED

To Hon. Charles Elmore Cropley, Clerk:

You are directed, that,

Whereas, counsel for the respective parties upon each of the foregoing appeals, have cooperated in eliminating from the record certified to and filed in this Honorable Court, all surplus and immaterial matter, it will be necessary to print the entire record including all Exhibits, as so certified and filed, omitting therefrom repetition of caption only, and the Exhibits to defendant's answer, said exhibits being included in the Volume of Exhibits and so certified.

Dated at Washington, D. C., this 28th day of October, 1931.

Harry O. Glasser, H. G. McKeever, Geo. A. Ramsey, Edgar A. deMeules, Counsel for Champlin Refining Co.

[fol. 616] [File endorsement omitted.]

[fol. 617] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1931

No. 486

DEFINITE STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Nov. 9, 1931

Come now, Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes, C. C. Childers, constituting the Corporation Commission of the State of Oklahoma, and Paul Walker, E. R. Hughes and C. C. Childers, and J. Berry King as Attorney General of the State of Oklahoma, and J. Berry King, Lewis R. Morris as County Attorney of Oklahoma County, State of Oklahoma, and Lewis R. Morris, the appellants in the above entitled cause, and state that the points upon which they intend to rely upon their cross-appeal in this Court in this cause are as follows:

1. That part of the Final Decree entered the 11th day of September, A. D. 1931, perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions, or any part thereof, of Section 8 of the Act of the Legis-[fol. 618] lature of Oklahoma, Session Laws 1915, page 35 (being Section 7961, Compiled Oklahoma Statutes 1921), is erroneous, and should be reversed.

2. Said Section 8 is severable from the remainder of the Act, and no prosecution having been instituted against appellee, or any of its officers, agents or employees thereunder for any direct or indirect violation of the Act, and it not having been shown that such prosecution had been threatened, no question pertaining to the interpretation of said section or its validity should have been considered or determined in this suit, and no injunction to restrain its enforcement issued.

3. The District Court, erroneously interpreted and construed said Section 8 as imposing a penalty for violation only of the Act or Statute, and not for violations of the

orders, rules and regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect.

4. When the Corporation Commission has determined by proper order pursuant to the provisions of the Act the question of the amount of all crude oil and petroleum that may be produced from any common source of supply without waste, and has determined from the factors set forth in the Statute, the question of the proportion thereof that any person, firm or corporation having the right so to do, may produce; the production of crude oil and petroleum by such person, firm or corporation from such common source of supply in excess of the proportion so determined constitutes a violation of the Act within the meaning of Section 8 thereof.

[fol. 619] 5. Said Section 8 is a valid exercise of the legislative power of the State of Oklahoma, and does not deprive the appellee of his property without due process of law, or deny to him the equal protection of the law, or any right, privilege or immunity granted by the Constitutions of the United States or of the State of Oklahoma.

6. That part of the Final Decree entered on the 11th day of September, A. D. 1931, perpetually enjoining and restraining J. Berry King, Attorney General of Oklahoma, and Lewis R. Morris, County Attorney of Oklahoma County, Oklahoma, and each of them, their servants and employees, from enforcing or attempting to enforce the provisions, or any part thereof, of Section 9, of the Act of the Legislature of Oklahoma, Session Laws 1915, page 35 (being Section 7962 Compiled Oklahoma Statutes 1921), is erroneous and should be reversed.

7. Said Section 9 is severable from the remainder of the Act, and there being no pending proceeding for the appointment of a receiver of the producing properties of the appellee pursuant to the provisions of said Section 9, no question pertaining to the interpretation of said section, or its validity, should have been considered or determined in this suit, and no injunction to restrain its enforcement issued.

8. The provisions of said Section 9 for the appointment of a receiver for the operation only of producing wells and marketing the products thereof, of any person violating the provisions of the Act, by a court of competent jurisdiction

at the suit of the State, through the Attorney General, or [fol. 620] any county attorney, is not penal in character.

9. The District Court erroneously interpreted and construed said Section 9 as imposing a penalty for violations only of the Act or Statute, and not for violation of the orders, rules, and regulations of the Commission made pursuant to the Act for the purpose of carrying it into effect.

10. When the Corporation Commission has determined by proper order, pursuant to the provisions of the Act, the question of the amount of all crude oil and petroleum that may be produced from any common source of supply, without waste, and has determined from the factors set forth in the Statute the question of the proportion thereof that any person, firm or corporation having the right so to do may produce; the production of crude oil and petroleum by such person, firm or corporation from such common source of supply in excess of the proportion so determined, constitutes a violation of the provisions of the Act within the meaning of said Section 9 thereof.

11. Said Section 9 is a valid exercise of the legislative power of the State of Oklahoma and does not deprive the appellee of its property without due process of law, or deny to it the equal protection of the law, or any right, privilege or immunity granted by the Constitutions of the United States or of the State of Oklahoma.

Parts of Record to be Printed

The appellee herein is appellant in Cause No. 485, October Term 1931. Both appeals are from the same Final Decree or Order, and pursuant to statute (R. S. Sec. 1013; U. S. C. Sec. 864) only one transcript of the record has been lodged in this court. The above named appellants under- [fol. 621] stand the practice to be to print only one record to be used on both appeals. All parts of the record deemed necessary to be printed for consideration of the points above set forth have been or will be designated in connection with the record to be printed in said Cause No. 485 by the appellant therein appellee herein, and the appellants herein deem it unnecessary to reprint any further portions of the record.

If, however, appellants herein are mistaken, then they state that only the following parts of the record as filed in

this court are deemed necessary to be printed for consideration of the points set forth above, namely:

(1) Plaintiff's Third Amended and Supplemental Bill of Complaint filed by leave of Court on the 29th day of June 1931, refiled August 3, 1931, omitting the exhibits.

(2) Answer of defendants to Third Amended and Supplemental Bill of Complaint, omitting the exhibits.

(3) Findings of Fact in the cause filed on September 11, 1931.

(4) Conclusions of Law filed in the cause on September 11, 1931.

(5) Revised Opinion of the Court filed on September 1, 1931.

(6) Revised Dissenting Opinion of Judge Kennamer filed October 17, 1931.

(7) The Decree, or Order, entered on September 11, 1931.

(8) Defendants' Petition for Appeal filed on October 12, 1931.

[fols. 622 & 623] (9) Defendants' Assignment of Errors on Appeal filed October 12, 1931.

(10) Order Allowing Appeal entered October 17, 1931.

(11) Citation to Plaintiff.

Dated this 6th day of November, A. D. 1931.

J. Berry King, Attorney General of Oklahoma; E. S. Ratliff, Attorney for Corporation Commission, State of Oklahoma; W. B. German, Counsel for Appellants, by W. P. Z. German.

Service of the foregoing Definite Statement of Points to be Relied Upon and Designation of the Parts of the Record to be Printed is hereby acknowledged to have been made upon the appellee, this 6th day of November, 1931.

Horace G. McKeever, Harry O. Glasser, Edgar A. deMeules, Geo. S. Ramsey, Attorneys for Champlin Refining Company, Appellee, by Geo. S. Ramsey.

[fol. 624] [File endorsement omitted.]